Supreme Court, U.S.
FILED
DEC 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1079

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

STEPHEN A. KOCZAK, KATHERINE E. ROTTER, and JOHN G. RESCH,
Appellants,

v.

G. DALLAS DIXON, THE MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE, JEFFREY LAURENTI, HOWARD KAYE, GERALD STOCKMAN, LOUISE LOMMA, JANE BURGIO, W. CARY EDWARDS, THOMAS H. KEAN,
Appellees.

On Appeal from the United States Court of Appeals for the Third Circuit

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Appendix Vol. I

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Joseph F. Shanahan
Lambertville, N.J.
08530

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

STEPHEN A. KOCZAK, KATHERINE E. ROTTER, and JOHN G. RESCH,
Appellants,

v.

G. DALLAS DIXON, THE MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE, JEFFREY LAURENTI, HOWARD KAYE, GERALD STOCKMAN, LOUISE LOMMA, JANE BURGIO, W. CARY EDWARDS, THOMAS H. KEAN,
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL NO. 86-1586
OPINION OF THE COURT

STEPHEN A. KOCZAK,
et al.,

Plaintiffs,

v.

G. DALLAS DIXON, et al.,

Defendants.

Trenton, New Jersey
May 30, 1986

B E F O R E: THE HONORABLE ROBERT E. COWEN, U.S.D.J.

A P P E A R A N C E S:

BRENER, WALLACK & HILL
BY: MITCHELL NEIDER, ESQ., and
LAURENCE A. ELGIN, ESQ., (D.C. Bar),
For the Plaintiffs.

W. CARY EDWARDS, ATTORNEY GENERAL,
BY: DONNA KELLY-BOCCHER, D.A.G.,
For Defendants Governor Kean, Secretary of State, Attorney General of New Jersey.

PAUL T. KOENIG, ESQ.,
For Defendant Mercer County Clerk.

GLEN FILIPPONE, ESQ.,
Assistant Burlington County Prosecutor,
For Defendant Burlington County Clerk.

LEONARD FISHMAN, ESQ.,
For Defendant Burlington County Clerk.

MARK SETARO, ESQ.,
For Defendant Jefirey Laurenti.

LYNNE JOHNSTON, C.S.R.
Official Court Reporter
United States District Court
P.O. Box 6822
Lawrenceville, New Jersey 08648
(609) 695-0535

THE COURT: This is a case concerning the Mercer County Democratic Committee and the Mercer County Democratic Central Committee. Before the Court are plaintiffs' motions for preliminary injunction and defendant's cross-motion which was filed on short notice with the permission of the plaintiff seeking to dismiss the complaint.

The essence of the plaintiffs' complaint is that the Mercer County Democratic Central Committee is the alter ego of the

Mercer County Democratic Committee and since New Jersey law forbids and prohibits the latter from endorsing primary candidates, it may not do so through the former.

While the plaintiff may have a claim under State law, and I make no decision one way or the other concerning the merits of this case, if this matter were before a State Court trivunal, I fail to see how he, as has stated, a claim under federal law upon which relief can be granted. The plaintiff in his moving papers continually referred, and he did on argument, to "delegated federal law." Apparently, this is a reference to the State law governing the conduct of Congressional elections which states are allowed to enact prusuant to Article I, Section four fo the Federal Constitution.

The plaintiffs' argument should be rejected and is rejected since its acceptance would produce the peculiar result that all State election law in all 50 states, when applied to the Congressional elections, is federal law. It is certainly true that Congress has the power to override State law in matters governing Congressional elections, but this unexercised power does not, and I think I used the expression previously, "federalize" existing State law in every single state.

Although there have been vague references to constitutional provisions by the plaintiff and a short seminar in the federalist papers, I have not seen the subject matter jurisdiction of this Court set forth with particularity upon which this Court can adjudicate the matters which have been brought before me. And it seems

that the federal claims are certainly subject to dismissal, for the same reason -- well, by reason of my dismissing the claims which I have just alluded to, the pendent claims must also be dismissed, all without prejudice.

Certainly plaintiffs' motion for preliminary injunction should be denied. Not only is there not a likelihood of success on the merits, but quite frankly, there is no likelihood of success, since the Court does not even have jurisdiction in the matter.

However, even if this Court did have jurisdiction, which it has ruled it does not, I am firmly of the opinion that this is a classic traditional and textbook example of a plaintiff who knew or, at the very least, should have known, although I hold and find that the plaintiff knew of

the rights which he is bringing to this Court. We are not dealing with someone who is unsophisticated or a babe in the woods. We are dealing with someone who is intricately involved in the election process, and the facts upon which this complaint is based were known by him, or at the very least, and I am not capitulating my decision to that point, should have been known. For him to come to court with an application, I think the application was filed in front of me approximately two weeks prior to the primary, is in such poor taste that I would prefer not to use words to describe the laches which were engaged in and the expense and the inconvenience which the complaint seeks to put everyone to.

As the affidavits of the defendants have spelled out, it is extremely costly to

reprint the necessary ballots, and it causes confusion, complexification, and has very poor results on the voting public.

Finally, while it is not necessary to my decision, I think it is worth noting that there is absolutely no connection between the endorsement which plaintiff challenges and the slogans on the ballot which plaintiff seeks to remove. A candidate who wishes to use a slogan simply submits that slogan before any other candidate submits the same slogan. I wish to endors this since I just don't understand the plaintiffs' agrument in that regard, since it is apparent to me that this statement which I have made is all too clear and not even subject to any debate.

For all of the reasons set forth above, I am dismissing the complaint and I am further denying plaintiffs' application for

any stay of this dismissal. All right.

Gentlemen and lady, whether you agree or disagree with my decision as I have articulated it here, is there anything further at this time which is necessary in order for the Circuit to review this matter for the plaintiff?

MR NEIDER: Just indicate, your Honor, so that the record is clear, while some of the defendants are not here today, I can make the representation that I spoke to either counsel or counsel's office of, for all defendants who entered an appearance, advised them of today's scheduled hearing before your Honor and papers were served on them accordingly.

THE COURT: All right. What you are saying is everyone has been noticed?

MR. NEIDER: That's correct, your Honor.

THE COURT: Very fine. Anything further

for the defendants?

MS. KELLY-BOCCHER: No, your Honor.

MR. FISHMAN: No, your Honor, nothing further.

THE COURT: All right. I will request that the reporter transcribe my opinion at the cost and expense of the plaintiff as soon as possible, and as soon as practicable.

MR. NEIDER: Thank you, your Honor.

THE COURT: Thank you.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 86-5348

STEPEHN A. KOCZAK,
KATHERINE E. ROTTER, and
JOHN G. RESCH,

Appellants

v.

G. DALLAS DIXON,
THE MERCER COUNTY DEMOCRATIC COMMITTEE,
THE MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE,
JEFFREY LAURENTI, HOWARD KAYE,
GERALD STOCKMAN, LOUIS LOMMA, HANE BURGIO,
W. CARY EDWARDS, THOMAS H. KEAN

On Appeal from the United States District Court

For the District of New Jersey (Trenton)

(D.C. Civil No. 86-1856)

District Judge: Robert E. Coven

Submitted Under Third Circuit Rule 12(6)

September 18, 1986

Before: SEITZ, HIGGINBOTHAM and SLOVITER, Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against the appellants.

By the Court,

Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT
No. 86-5348

STEPHEN A. KOCZAK, etc.

vs.

G. DALLAS DIXON, etc.

Stephen A. Koczak, Katherine E. Rotter and John E. Resch, Appellants

Present: SEITZ, HIGGINBOTHAM and SLOVITER, Circuit Judges

1. Motion by Appellants for an order staying the mandate of judgment of this court dated September 30, 1986 and granting emergency relief to include the Re-running of the Democratic primary election for United States Congress in the 4th District of New Jersey before the general election on November 4, 1986, etc.

2. Copy of Application to the Honorable William J. Brennan for stay of judgment, etc. with attachments to the applications.

3. The Judgment order was entered on September 30, 1986 in the above-entitled case. Any Answer which would be due by October 27, 1986 will be forwarded upon receipt of same.

Reepectiully,

Deputy Clerk

The foregoing Motions are denied

By the Court,

Circuit Judge

Dated: October 22, 1986

ORDER OF THE THIRD CIRCUIT DENYING PLAINTIFFS' MOTION TO EXPEDITE, AUGUST 29, 1986

CAPTION

Present: SEITZ, HIGGINBOTHAM, and SLOVITER, Circuit Judges.

1. Appellants' motion to expedite and waiver of claim to oral argument and waiver filing of reply brief, with request that appellees' brief be filed by August 26, 1986, and list case in September 1986, so that a primary might be held in that month,

2. Letter-response of appellee, G. Dallas Dixon, to appellants' motion to expedite, etc., in the above-entitled case.

Respectfully,

Deputy Clerk

The foregoing Motion is denied except that the matter may be listed at the convenience of the Clerk after Sept. 3, 1986.

By the Court,

Judge

Dated: August 29, 1986

ORDER OF THE THIRD CIRCUIT DENYING
PLAINTIFFS' MOTION TO SUPPRESS DEFENDANT
MOTION NOT FILED IN CONFORMITY WITH RULES

CAPTION

Present: SEITZ, HIGGINBOTHAM, and

SLOVITER, Circuit Judges.

1. Appellants' motion to suppress letter-response of appellees, Dixon and Mercer County Democratic Committee, in opposition to appellants' motion to expedite, on the ground that letter-response did not conform to the Court rules relative to form of motion and other papers, in the above-entitled case.

Respectfully,

Deputy Clerk

The foregoing Motion is denied

By the Court,

Judge

APPENDIX 6: NOTICE OF APPEAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 86-5348

STEPHEN KOCZAK, et al.	ON APPEAL FROM A [JUDGMENT OF THE UNITED STATES [DISTRICT [COURT
Plaintiffs [-Appellants	FOR THE DISTRICT [OF NEW [JERSEY Trenton Division
v.	
G.DALLAS DIXON, etal.	Civil Action
Defendants- [Appellees	

NOTICE OF APPEAL

Joseph F. Shanahan
RD 2 Box 105
Lambertville, New Jersey 08530
609- 397- 3158

Laurence A. Elgin
2762 Woodley Place, N.W.
Washington, D.C. 20008
202-628-1114

TO: SALLY MRVOS
Clerk, Third Circuit
United States Court of Appeals

All Counsel on Certificate of Service filed herewith

[p.2]

NOTICE is hereby given that STEPHEN A. KOCZAK, KATHERINE E. ROTTER and JOHN E. RESCH, above-named plaintiffs-appellants, hereby appeal to the Supreme Court of the United States from the final judgment Order of the United States Court of Appeals for the Third Circuit entered in the action on 30 September, 1986, which was then followed by a denial of motion for stay of mandate of judgment and granting of emergency relief on 22 October, 1986.

This appeal is taken pursuant to 28 U.S.C. s.1254 (2).

[signed]

Joseph F. Shanahan
Counsel for Plaintiffs-
[Appellants.

CERTIFICATE OF SERVICE
(In compliance with Supreme Court rule 28)

I hereby certify that I am a member of the bar of the United States Supreme Court and that I have caused to be mailed, U.S. Mail, first class, postage prepaid or hand delivered, on 22 December 1986, two copies of the Notice of Appeal to the Supreme Court of the United States to all of the following counsel: (continued on following page)

(signed) Joseph F. Shanahan

Donna Kelly-Boccher, Esq.
Deputy Attorney General
Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

Walter R. Bliss, Jr., Esq.
126 Wall Street
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222 South Broad Street
Trenton, New Jersey 08608

John C. Sahradnik, Esq.
212 Hopper Avenue

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640 South Broad Street
Trenton, New Jersey 08608

[signed] Joseph F. Shanahan

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR DAMAGES FOR VIOLATION OF CONSTITUTIONAL AND CIVIL RIGHTS

STEPHEN A. KOCZAK, 261 Ashmore Ave, Trenton, Mercer County, New Jersey, individually and as he is a voter in Mercer County and a qualified candidate for the nomination of the Democratic Party for office of the U.S. House of Representatives from the fourth congressional district who are eligible to run for the office of party nominee for the national legislature, KATHERINE A. ROTTER, 911 Hudson Street, Trenton, Mercer County, New Jersey, and JOHN G. RESCH, 1845 South Clinton Avenue, Mercer County, Trenton, New Jersey, individually and as a registered voters and members of the Mercer County Democratic Party.

Plaintiffs,

v.

G. DALLAS DIXON, 222 South Broad Street, Trenton, Mercer County New Jersey, individually and as Chairman of the MERCER COUNTY DEMOCRATIC COMMITTEE, Chairman of the Mercer County Democratic Central Committee and leader of the Mercer County Democratic "organization"; "THE MERCER COUNTY DEMOCRATIC COMMITTEE, 901 South Broad Street, Trenton, Mercer County, New Jersey; THE MERCER COUNTY DEMOCRATIC

CENTRAL COMMITTEE, 222 South Broad Street, Trenton, Mercer County, New Jersey; JEFFREY LAURENTI, 464 Hamilton Avenue, Trenton, Mercer County, New Jersey, individually and a Democratic candidate for the fourth congressional district; HOWARD KAYE, 102 Graf Avenue., Lawrenceville, Mercer County, New jersey, individually and representative of those who serve on both defendant committees; GERALD STOCKMAN, 176 West State Street, Trenton, Mercer County, New Jersey, individually and as a public officeholder; LOUISE LOMMA, 1501 Parkside Avenue, Ewing, Mercer County, New Jersey; JANE BURGIO, 405 West State Street, individually and as Secretary of State of New Jersey; W. CARY EDWARDS, Richard Hughes Justice Complex, CN 080, Trenton, Mercer County, New Jersey, individually and as Attorney General of the State of New Jersey; THOMAS H. KEAN, State Capitol, Trenton, Mercer County, New Jersey, individually and as Governor of the State of New Jersey.

Defendants.

Plaintiffs by way of Complaint against the defendants allege as follows:

JURISDICTION

1. Jurisdiction is conferred on this

Court, and this action is authorized by 28 U.S.C. 1331, 28 U.S.C. 1343, 28 U.S.C. 2201, 28 U.S.C. 2202, 42 U.S.C. 1983, 42 U.S.C. 1985, 42 U.S.C.1986, Art.I, Sec.2, Cl.1, Art.II, Sec.4, Cl.1, Art. VI, Cl.3, and the First Amendment and Fourteenth Amendment to the Constitution of the United States.

PARTIES

STEPHEN A. KOCZAK

2. Plaintiff STEPHEN A. KOCZAK ("Koczak") is an adult citizen of the United States, residing at 261 Ashmore Avenue, Trenton, Mercer County New Jersey, above 25 years of age who is a registered Democrat and voter in Mercer County, New Jersey and who is at present a duly qualified candidate for the nomination of his party for Representative in Congress on the fourth district of New Jersey.

3. Plaintiff brings this suit both as an individual and on behalf of all those in the Mercer County Democratic Party, who, like him, are eligible to run for federal legislative office.

KATHERINE E. ROTTER

4. Plaintiff KATHERINE E. ROTTER ("Rotter") is a registered voter and member of the Democratic Party in Mercer County who desires to vote for the plaintiff Koczak as a candidate for the party nomination for representative from the fourth congressional district unencumbered by preferential treatment or placement on the ballot of any endorsement or statement that indicates or implies that any party organization has endorsed plaintiff Koczak's opponent. In addition thereto, plaintiff Rotter brings the present action on behalf of all registered Democratic voters in Mercer County, both within and

without the local democratic organization, who seek to vindicate the statutory prohibition contained in N.J.S.A. 19:34-52 and who desire an open primary process.

JOHN RESCH

5. Plaintiff John G. Resch ("Resch") is a registered voter and member of the Democratic Party in Mercer County who desires to vote for the plaintiff Koczak as a candidate for the party nomination for representative from the fourth congressional district unencumbered by preferential treatment or placement on the ballot unencumbered by preferential treatment or placement on the ballot or any endorsement or statement that indicates or implies that any party organization has endorsed plaintiff Koczak's opponent.

G. DALLAS DIXON

6. Defendant G. Dallas Dixon ("Dixon") is the Chairman of the defendant MERCER COUNTY

DEMOCRATIC COMMITTEE, and the Chairman also of the defendant MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE.

7. It is alleged upon information and belief that defendant Dixon is the leader of the G. DALLAS DIXON "organization" of the Mercer County democrats.

8. It is alleged upon information and belief that defendant Dixon has in the past encouraged and aided some candidates to have slogans or statements put next to their names on the primary ballot which would indicate that they are endorsed by the
Democratic Party and the inner organization thereof whereas certain candidates, such as plaintiff Koczak, are thereby made to appear as outsiders and unendorsed "renegade" candidates with a consequent negative effect on their campaigning.

10. In accordance with the By-laws of the

defendant MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE, Dixon has the power to call or not call meetings and is responsible for proper notice of the same, and that under the By-laws he controls the appearance before the Central Committee of candidates seeking endorsement for elective office.

MERCER COUNTY DEMOCRATIC COMMITTEE

11. The defendant MERCER COUNTY DEMOCRATIC COMMITTEE ("County Committee") is a statutorily authorized county committee created by virtue of N.J.S.A. 19:3-5 et seq.; the method of selection of whose members is prescribed by the legislature.

12. The County Committee is chaired by Defendant Dixon.

13. The County Committee is forbidden by statute, N.J.S.A. 19:34-52, to screen or endorse candidates prior to a primary.

14. The day-to-day operations of the

defendant County Committee are run out of the office suite occupied by Defendants Dixon and Louise Lomma.

MERCER COUNTY DEMOCRATIC CENTRAL COMMITTEE

15. It is alleged upon information and belief that the Mercer County Democratic Central Committee ("Central Committee") was created some years ago by principals of the defendant COUNTY COMMITTEE for the avowed purpose of endorsing and screening party candidates prior to the primary in violation of N.J.S.A. 19:34-52.

16. The defendant County Committee is not authorized or sanctioned in any way by any law or statute enacted by the New Jersey legislature and has no official status of any kind under the laws of New Jersey.

17. In accordance with the By-laws of the Central Committee the express purpose of said committee is to endorse and screen candidates prior to the primaries. A true

and correct copy of the By-Laws of the Central Committee is attached hereto as Exhibit "A" and incorporated herein.

18. The Central Committee has over the years screened and endorsed candidates and has done so again this election year at its convention held April 2, 1986, with the intent to communicate to the public the names of the candidates so endorsed, including without limitation, the name of defendant Jeffrey Laurenti.

19. The defendant Dixon is Chairman of the Central Committee by virtue of his office as Chairman of the County Committee. Likewise, the other officers of the Central Committee are also the officers of the County Committee.

20. The Central Committee, like its official "twin", the County Committee is operated on a day-to-day basis out of the offices of defendant Dixon.

21. The mail and administrative work of the Central Committee is handled by defendant Louise Lomma, an employee of the County Committee out of the offices of the County Committee. The Central Committee has no staff or services of its own, but must rely upon the staff and services of the County Committee.

22. The meeting calls and agenda of the Central Committee are controlled by defendant Dixon.

23. The rules of the Central Committee show that the procedures by which its members are selected bear no resemblance to the methods of selection of members prescribed by the state legislature for the selection of the members of the defendant County Committee.

24. In addition to the members of the Central Committee members who are members by virtue of their being members and/or

officers of the defendant County Committee, the Central Committee has numerous members who are at present incumbent officeholders.

25. Furthermore, twenty five (25) members of the Central Committee are chosen by defendant Dixon by personal preference.

26. Approximately 55 percent of the members of the defendant Central Committee are also members of the defendant County Committee.

JEFFREY LAURENTI

27. Defendant Jeffrey Laurenti ("Laurenti") is running for the Democratic Party's nomination for the office of nominee of the party for Representative in Congress from the fourth congressional district as the opponent of plaintiff Stephen A. Koczak.

28. Defendant Laurenti is a member of the defendant central Committee and, as such, received the endorsement of that body at

its convention held on April 2, 1986. Defendant Laurenti has represented and is representing to the press that he is such endorsee, and is allowing others to do so as well.

29. It is alleged upon information and belief that defendant Laurenti has submitted or is submitting to the Secretary of State a slogan or statement which he wishes to accompany his name on the primary ballot which states that he is the endorsed Democratic "organization" candidate despite the state statutory ban on such endorsements by party committees.

30. The defendant GERALD STOCKMAN ("Stockman") is a member of the New Jersey State Senate, and a member of the defendant Central Committee.

31. It is alleged upon information and belief that defendant Stockman is a member of the Mercer County "organization"of

defendant Dixon.

32. It is alleged upon information and belief that defendant Stockman participated as nominator of Laurenti in the convention of the defendant Central Committee at which defendant Laurenti was endorsed and plaintiff Koczak was not.

33. Defendant Stockman is representative of the incumbent officeholders affiliated and allied with defendant Dixon and the latter's "organization" who in the past, and presently, participate in nominating candidates for elective office through the Central Committee though they cannot do so through the County Committee.

LOUISE LOMMA

34. Defendant LOUISE LOMMA ("Lomma") is a member, employee and the Secretary of the defendant County Committee.

35. Defendant Lomma is also a member of the defendant Central Committee and a

member of the Mercer County Democratic "organization" of defendant Dixon.

36. It is alleged upon information and belief that defendant Lomma administers the day-to-day business of both the aforesaid committees, and handles their mail out of the offices of defendant Dixon.

HOWARD KAYE

37. Defendant HOWARD KAYE ("Kaye") is a member of both the defendant County Committee and the defendant Central Committee.

38. Defendant Kaye is the Chairman of the Credentials Committee of the Central Committee and a member of the Mercer County Democratic "organization" headed by defendant Dixon and as such is representative of the class of individuals who are members of both committees.

JANE BURGIO

39. Defendant JANE BURGIO ("Burgio") is

Secretary of State of New Jersey and the state official entrusted with cabinet level responsibility for composing the primary ballots and deciding the positioning of names upon them and deciding also upon whether the slogans or statements which appear on the ballot with the names as submitted by the candidate will be printed upon the ballots.

40. Defendant Burgio is also the cabinet level official with the responsibility for deciding whether the "bracketing" of names upon the ballot will be done as applied for by the candidates.

41. The actual state election commission handling these matters is under supervision of defendant Burgio and is part of the department which she runs and administers.

42. Defendant Burgio is sworn to uphold the federal laws and constitution as required by Art. VI of the federal

constitution.

W. CARY EDWARDS

43. Defendant W. Cary Edwards is the chief law enforcement officer of the State of New Jersey, and is sworn to uphold the laws and the Constitution and responsible for fairly administering the election laws and punishing those who violate them in elections held in the state, including those for the nomination and election to the national legislature.

THOMAS H. KEAN

44. The defendant THOMAS H. KEAN is the chief executive of the State of New Jersey, and as such, is entrusted with faithfully administering and executing the laws in accord with and the United States Constitution.

45. Defendant Kean is responsible for the certification of winning candidates and the validity of their elections in the State of

New Jersey, including federal candidates for the national legislature nominated and elected in the state.

46. Defendant Kean is sworn to uphold the federal laws and the Constitution of the United States.

COUNT 1

47. Plaintiff Koczak is entitled to run as a candidate for nomination to his party's office of nominee for the United States Congress from the fourth district of New Jersey under the state statutory scheme prescribed by the legislature of this state pursuant to the constitutional mandate of Art. I, Sec 4, Cl. 1, the "Times, Places and Manner Clause."

48. The plaintiff voters and other similarly situated voters who wish to vote for plaintiff candidate Koczak or other independent Democratic candidates are entitled to vote for their candidate of

choice for the office of Democratic Party nominee for the office of nominee for the office of Representative in Congress from the fourth district as a candidate subject only to the prescription of the state legislature as to the times, places and manner of his seeking election and unburdened by any disadvantage vis-a-vis another candidate in the form of an endorsement of any other candidate by any party organization or artificial entity when the legislature has prescribed such endorsements.

49. The rights of the voter plaintiffs and the candidate plaintiffs are intertwined and mutually affected by the violations of constitutional provisions and rights complained of herein.

50. The state statutory scheme enacted into law by the legislature of New Jersey, specifies the role that committees of

political parties may play in the electoral process, including primaries, and, as part of that scheme, at N.J.S.A. 19:34-52, prohibits party committees from endorsing any candidate prior to the party's primary election.

51. The primary election in New Jersey in which plaintiff Koczak is a candidate for his party's nomination for the office of representative in congress from the fourth district takes place on June 3, 1986.

52. Historically, party conventions previously provided the party nominees in New Jersey.

53. However, because of public dissatisfaction with the political manipulation at conventions, the legislature replaced the convention system of nominations with primary elections.

54. In so doing, the legislature chose to forbid endorsements by any party entity or

group other than individuals exercising their first amendment rights of expression and speech by controlling party committees, forbidding them from endorsing candidates prior to primaries and prohibiting existing, incumbent officeholders from serving in their ranks.

55. The defendant Mercer County Democratic "Committee, acting through certain of its principals, acted to circumvent this statutory scheme and the prohibitions it contains by creating an unauthorized Central Committee with overlapping executive control, substantial overlapping membership, including membership by incumbent officeholders, entrenched and otherwise, for the purpose of endorsing candidates prior to primaries and did so create such a committee, the defendant Central Committee, which continues to endorse candidates to this day

and has so endorsed the defendant Laurenti for the upcoming June 3, 1986 primary to the detriment of the plaintiffs.

56. It is alleged upon information and belief that the intent of the legislature to prohibit endorsements before the primary is especially clear in that N.J.S.A. 19:34-52 was previously revoked for a period of several years but was subsequently reenacted when the "insider" manipulation which the provision was designed to prevent, reasserted itself.

57. It is alleged upon information and belief that the present defendants Dixon, Kaye, Laurenti, Stockman, Lomma, their employees, agents and representatives, despite the clear state statutory scheme forbidding it, have worked and conspired together through the G. Dallas Dixon organization within the county party and the defendant Central Committee to endorse

the candidacy of defendant Laurenti and correspondingly, burden the candidacy of his opponent, plaintiff Koczak, as unendorsed or lacking in endorsement by comparison, and have been and are urging the defendant Secretary of State Burgio to place upon the ballot adjacent to the name of the defendant Laurenti a slogan or statement containing the words "regular Democratic Organization" candidate indicating and implying that defendant Laurenti is endorsed by the "organization" of defendant Dixon and the established structure of the Democratic Party when, in fact, he has not been so endorsed by any body with legitimate authority to do so.

58. The names of the defendant Mercer County Democratic Committee and the defendant Mercer County Democratic Central Committee are confusingly similar, they operate out of the same offices, with the

same leadership and the same administrative personnel performing their functions, and the general voting public cannot be reasonably expected to, and indeed, does not distinguish between them.

59. That all of the defendants and others, under the leadership of defendant Dixon held a convention of the Central Committee on April 2, 186, and endorsed defendant Laurenti and have been representing the same to the public, particularly to reporters and others of the media.

60. That the ballots for the June 3, 1986 primary are soon to be printed and that presently defendant Laurenti has requested a slogan to be placed on the primary ballot near the name of defendant Laurenti that would state that defendant Laurenti was an "organization" Democrat, indicating clearly that he is endorsed by Dixon "organization"

and was endorsed by the convention which placed the unofficial and unsanctioned endorsement upon him in violation of the statutory scheme.

61. The plaintiffs will be irreparably harmed by the aforesaid campaigning and the impact upon the ordinary voters at the polls of this deceptive endorsement if it is not corrected, and plaintiff Koczak has already suffered harm in his campaign in loss of publicity as a candidate on equal terms with the defendant Laurenti.

62. The effect of this endorsement scheme has been to circumvent the statutory scheme enacted into law by the N.J. legislature in accordance with delegated federal law under the mandate of Art. I, Sec. 4.

COUNT II

63. The allegations of Count I are incorporated by reference as though fully

set forth herein.

64. The establishment, operation and effect of the endorsement scheme by the defendants as more fully set forth herein, constitutes an unlawful interference by the defendants in the primary process in derogation of the public interest, specifically, and without limitation, the right of individual voter participation in the choice of party candidates in violation of the legislative prohibition of N.J.S.A. 19:34-52.

65. Plaintiffs have no adequate remedy at law or otherwise for the damage done and threatened by reason of defendants' unlawful conduct as more fully set forth herein.

66. Plaintiff will suffer irreparable harm, damage and injury and have already suffered harm, damage, and injury unless defendants' unlawful conduct in

establishing or maintaining the aforesaid endorsement scheme is restrained and enjoined.

COUNT III

67. The allegations of Counts I and II are incorporated by reference as though fully set forth herein.

68. The Constitution, in Art. I, Sec. 2, Cl. 1 decrees that the members of the House of Representatives shall be chosen by the people.

69. The Legislature of New Jersey, in enacting the statutory scheme of Title 19, has amplified the role of the people in the state in choosing their Representatives in Congress at the expense of party organizations, party committees, insiders and bosses and has thereby defined what "by the people" of New Jersey shall consist of by suppressing the endorsing of candidates by any party entity other than people as

individuals and by restricting the participation of incumbent holders of public office in party committees.

70. The use of unofficial and unauthorized conventions for the avowed purpose, as here, of screening and endorsing candidates prior to the primary, increases the say of those candidates prior to the primary, increases the say of those attending the conventions in who shall be selected as nominees and correspondingly decreases the franchise of the ordinary people of the party so that the primary stage of the election is less "by the people" than the statutory scheme prescribed by the legislature.

71. In this instance defendant G. Dallas Dixon has reduced the say of those party members not on the central committee in who their candidates may be and enhanced the power of his own "organization" in

circumvention of the clear intent of the legislature.

COUNT IV

72. The allegations of Counts I, II and III are incorporated by reference as though fully set forth herein.

73. The rights of voters and candidates regarding ballot placement and statements are often intertwined as they are in this instance.

74. The right to vote for the candidate of one's choice in the freest possible manner consistent with statutory prescription is a form of protected expression as it is by the collectivity of such expressions that the calculus of political expression is arrived at.

75. The right to run as a candidate and stand for positions before the electorate in the manner that allows the greatest opportunity of equality as between candidates is a protected form of

expression.

76. Activity which reduces the role of the primary in effecting the calculus of consent as to candidates embracing positions and voters responding to them, as here, by screening and endorsing at a convention beforehand, reduces and impinges upon freedom of expression as stated in these candidate pronouncements and the voters responding to them and that freedom is protected by the First Amendment to the Constitution.

77. Freedom of association, which emanates from the First Amendment, is likewise impinged upon by these activities of the defendants other than the state executive officials in as much as they reduce the meaningful association, and the communication that attends it, to a smaller inner group from the broad total membership of the party.

78. The state statutory scheme, in establishing the primary system, and funding it, makes it a state function conducted by a private organization under state prescription.

79. The most open possible primary system under the prescription of the legislature provides an avenue for the petition of redress of grievances protected by the First Amendment which the party inner groups cannot narrow or "choke off" as here has been done, particularly where the ultimate enforcement of this narrowing of the ability to petition for redress through the ballot box is done by state officials.

80. The plaintiff voters and the plaintiff candidate are not members of either of the defendant committees or any other insider grouping or "organization" and therefore lose their right to petition for redress when these groups of which they

are not a part exercise a screening and endorsing function.

COUNT V

81. The allegations of counts I, II, III and IV are incorporated by reference as though fully set forth herein.

82. The screening and endorsing by the defendant Central Committee and the "organization" of defendant G. Dallas Dixon gives greater protection to the right of those party members who are on the central committee or in the "organization" to the right to vote and have their votes fully count in choosing their candidates than it does to the rights of those party members who are not so privileged, indeed, it enhances the voting rights of the former and gives them greater weight than those of the latter.

83. The right of the franchise is the

most important right of all in a democracy because it underlies all the other rights and without it the rest of our civil rights will soon be eroded away.

84. The inequality of voting rights produced by the defendant party officials and functionaries and committees in adopting this practice of screening and endorsing before the primary in circumvention of the legislative scheme threatens the diminution and eventual loss of this most important right of all for the great majority of the ordinary Democratic voters of Mercer County because the principle of screening and endorsing in contravention of the legislative intent, if once accepted, can easily be enlarged.

85. The actions of the defendants as more fully set forth herein violate the Equal Protection Clause of the Fourteenth Amendment.

COUNT VI

86. The allegations of Counts I, II, III, IV and V are incorporated by reference as though fully set forth herein.

87. The actions of the defendants as more fully set forth herein constitute violations of the Constitutional clauses and amendments set out in each Count, namely the Times, Places and Manner Clause, Art. I, Sec. 4, Cl. 1; the "by the people" clause for the house, Art. I, Sec. 2, Cl. 1; the First Amendment rights of expression, of association and to petition for redress of grievances, the Fourteenth Amendment Equal Protection Clause and, therefore, as such, these violations violate the statute 42 U.S.C. 1983 in that they constitute the deprivation of the specific constitutional rights and privileges alleged under color of usage of the state of New Jersey in that its

officials have allowed these defendant party officials and functionaries of the Mercer County Democratic Party to use the color of authority provided by the extension of the state's authority to the defendant county committee for the purposes of regulating the primary to empower the unofficial "central committee" to implement its scheme of screening and endorsing candidates by means of the color of authority of the defendant Secretary of State in deciding ballot placements and slogans.

88. It is alleged upon information and belief that the defendant State officials negligently allowed this to happen in past elections and are about to do so again, thereby violating, for essentially the same reasons, the prohibition of 42 U.S.C. 1986 which provides plaintiffs with a cause of action against state officials for such

negligence; for the Governor, the Attorney General and the Secretary of State have the power to prevent or aid in stopping this circumvention of the state statutory scheme which deprives plaintiffs of their rights.

89. The Governor, the Attorney General and the Secretary of State know of these matters for they have been reported in the newspapers and the Secretary of State places the endorsing slogans and is familiar with the endorsement attempts by virtue of her office.

90. That likewise the party defendants have violated the structure of 42 U.S.C. 1985 (3) which provides for damages for the plaintiffs where two one more persons conspire directly or indirectly to deprive the plaintiffs of equal protection of the laws and the plaintiffs allege that the defendant G. Dallas Dixon and his fellow defendants who are party officers and

functionaries named herein have so conspired and do so still

WHEREFORE, plaintiffs pray:

1. That this Court shall determine and declare that the state statutory scheme contained in N.J.S.A. 19:34-52 is clear and unambiguous in its intent to prohibit endorsement by groups such as the defendant Central Committee or the "organization" of the defendant G. Dallas Dixon in any guise, and the endorsement by a Central Committee violates the express terms and intent of the statute and further that federal candidates are entitled to run unburdened by any such endorsements being given to their opponents as a matter of federal law where a legislature has so prescribed.

2. That a temporary restraining order, enjoining and restraining the defendant Democratic party officials and functionaries and the Democratic Mercer

County Democratic Committee from organizing and operating the defendant Mercer county Democratic Central Committee or a similar committee or organization for the purpose of screening, nominating and endorsing candidates for office in the upcoming Democratic Primary in Mercer county and from using party assets, publishing campaign materials, making public statements, communicating with the press or otherwise actively participating in any manner whatsoever in the Democratic primary election and/or campaign on behalf of a particular candidate or candidates, except individuals acting as individuals, until further order of this Court.

3. That a temporary restraining order, preliminary injunction and on final hearing of this matter, a permanent injunction issue, enjoining and restraining defendant Jane Burgio from placing any such slogan or

statement on the primary ballot for the June 3, 1986 primary election which slogan or statement would identify, indicate or imply in any manner the endorsement by the Mercer county Democratic Committee Mercer County Democratic Central Committee or a particular group or organization of the County Democratic party of a particular candidate or candidates.

4. That a temporary restraining order, preliminary injunction and a final hearing of this matter a permanent injunction issue enjoining and restraining the defendant Jeffrey Laurenti from submitting or prosecuting any such slogan or statement to or with the Secretary of State or displaying such a slogan or statement on signs of any sort, stating it in press releases or communicating it to the representatives of the media in public which identifies, indicates or implies in

any manner whatsoever that defendant Laurenti is endorsed by the defendant Committees or a particular group or organization of the county Democratic Party.

5. That a temporary restraining order, preliminary injunction and on final hearing of this matter a permanent injunction issue, commanding the defendant W.Cary Edwards and defendant Thomas H. Kean to enforce the state statutory scheme as written with regard to the delegated federal law which it embodies for the regulation of the election of Senators and Representatives in Congress.

6. Damages.

7. Cost of suit and counsel fee.

8. Such other relief as this Court deems just and equitable.

BRENER, WALLACK & HILL
By: Mitchell Neider

2-3 Chambers Street
Princeton, N.J. 08540
(609) 924-0808
Counsel for Plaintiffs

Dated: May 9, 1986

Of Counsel:

Laurence A. Elgin, Esq.
2762 Woodley Place, N.W.
Washington, D. C. 20008

(Attachment to complaint)

Rules Governing

THE MERCER COUNTY DEMOCRATIC

CENTRAL COMMITTEE

adopted 1971, amended 1982

1. Qualifications: Any registered Democrat may serve as a member of the Mercer County Democratic Central Committee.

2. Membership: The Central Committee shall consist of the following members:

a. The Chairperson, Vice Chairperson,

Secretary, Corresponding Secretary and Treasurer of the Mercer County Democratic Committee;

b. The State Committeemen and Committeewomen elected as prescribed by Title 19 of the Revised Statutes and residing in Mercer County;

c. All Municipal, county, State and Federal elected officials who reside in or represent any part of Mercer County and are registered Democrats, except elected municipal clerks and tax collectors;

d. Persons from each municipality in Mercer county pursuant to Section 3 below and the following formula:

I. two seats shall be awarded each municipality for each increment of 5,000 population, as determined by the most recent federal census;

II. two bonus seats shall be awarded each municipality for each increment of 10

percent by which the votes cast for the highest Democratic vote-getter in each municipality exceeded, on average, 40 percent of the total vote in each of the three most recent general elections; and

III. no municipality shall have fewer than two seats regardless of population or Democratic vote;

e. provided that they be registered Democrats, the County Superintendent of Elections, members of the County Board of Elections and one representative from each of the following organizations: Trenton Polish-American Democratic Club, Black Democratic Caucus, Hispanic Democratic Caucus, Democratic Women's Division, and Young Democrats;

f. Up to twenty-five (25) additional persons appointed by the Chairperson pursuant to Section 4 below;

g. The Chairperson of the Trenton

Municipal Committee and of any other municipal committee hereafter organized by wards.

3. Selection of Municipal Representatives: Beginning in 1983, no less than two thirds of every municipal delegation, as referred to in Section 2d above, shall be elected by the local Democratic organization charged with the selection of delegates, subject to the section of these Rules concerning disputed seating. Local club officers who serve as delegates ex officio, pursuant to local rules, shall be considered "elected" for purposes of this section. Nothing herein shall prevent a local organization from choosing to elect more than two thirds of its delegates.

If municipal groups cannot agree as to the method of selection of representatives (authorized by Section 2d, above), elected

Committeemen and Committeewomen shall choose one half. Representatives with half votes may be chosen only if necessary to ensure the one half representation referred to above.

Each municipality may choose alternates to serve in the absence of regular representatives. The alternates must be chosen in the same manner and in conformance with the same criteria as the regular representatives; and the number of alternates shall not exceed the number of regular representatives. Substitution of alternates for regular representatives, when necessary, shall be done at the sole discretion of the head of the local delegation determined by local rules, except only elected alternates may be substituted for elected representatives as long as elected alternates are available, and any substitution shall take into

account affirmative action criteria. Only alternates chosen and submitted to the Chairperson pursuant to these Rules may be substituted for regular representatives. Only delegates registered to vote at a particular meeting and present at the time a particular vote is taken shall be entitled to participate in that vote.

4. Appointments by the Chairperson. In order to recognize the contributions of groups that may not be represented by the elected Committeemen and women nor by the duly recognized organization of any municipality, the County Chairperson may appoint up to twenty-five (25) additional persons to the Central Committee. Said Chairperson shall solicit the advice of the recognized leaders of the group being given the appointed position or positions and may appoint a committee to assist him in this function. In addition, the

Chairperson shall appoint an alternate for each representative to serve in the absence of the regular representative.

In making appointments the Chairperson shall to the best of his or her ability meet the male/female and affirmative action requirements set forth in Section 5 below.

The Chairperson's appointments must be submitted within thirty (30) days after the municipalities submit the names of their delegates. Replacements for these appointments shall be made only upon resignation, death or change of status.

5. Affirmative Action. Each municipal delegation shall be comprised of 50 per cent women and 50 per cent men as required by the rules of the National Democratic Committee. Each municipal delegation also shall reasonably represent the percentages of black and hispanic population segments in each municipality as indicated by the

most recent federal census.

6. Credentials Subcommittee. The Chairperson shall appoint a standing Credentials Subcommittee, consisting of no fewer than ten (10) persons, who shall on an annual basis (a) review the selection and composition of each municipal delegation for compliance with these Rules, before the delegation or any part of it is confirmed as members of the Committee; and (b) establish the number of bonus seats to be assigned each municipality and, when appropriate, the number of seats based on population.

If the Credentials Subcommittee finds by a majority vote that the selection or composition of any municipal delegation or the group appointed by the Chairperson fails to conform with the requirements of these Rules, especially with respect to affirmative action and procedures for

selection, the Credentials Subcommittee shall recommend corrective action to the full Committee. Corrective action may include the exclusion from any meeting of all or part of any delegation, the substitution of new delegates, or such other remedies as the Committee deems most likely to assure compliance with these Rules. Final action on the recommendation of the Credentials Subcommittee shall be decided by a majority vote of the full Committee, exclusive of any group which is the subject of a recommendation. The Credentials Subcommittee shall communicate its recommendations to affected local groups and the Chairperson before any meeting of the full Committee to permit an opportunity for voluntary corrective action.

7. Adjustments to Municipal Base Membership. A municipality which

experiences a substantial increase or decrease in population between census years shall have the right to request an adjustment of its base membership determined by population pursuant to Section 2(d)(I) above.

8. Disputed Seating. In the event of a dispute regarding the identity of the recognized Democratic organization or organizations in any municipality, or any dispute regarding the method of selecting the representatives to the Central Committee, the groups or persons involved in the dispute shall promptly inform the County Chairperson of the dispute. The Chairperson shall then investigate into the dispute and recommend a settlement. Any person or party affected by the recommended settlement may then have the dispute presented to the entire Central Committee, (excluding those whose seats are in

dispute, if any) which may overrule or alter the recommended settlement by a two-thirds vote of the members present at a duly called meeting.

9. Terms.

a. The terms of members referred to in Section 2 a, b, and c, shall be co-extensive with the terms of their respective offices.

b. All other members of the Central Committee shall serve for one year or until successors are chosen or elected, with terms commencing on February 1 of each year.

10. Vacancies. Vacancies shall be filled for the unexpired portion of the term only and in the manner in which the original selection was made.

11. Chairperson. The County Chairperson shall be he presiding officer of the Central Committee.

12. Purpose. The purpose of the Central Committee is to endorse candidates for County, State and Federal offices in the Democratic Primary in Mercer County, to the extent permitted by law. Unendorsed candidates may be entitled to run in the same column with the endorsed candidates but may not use the same slogan. The Committee shall adopt such rules as it deems necessary to accomplish this purpose, consistent with full and fair consideration of all potential candidates.

13. Candidates to be considered. Any person eligible to run for office in the Democratic Primary may speak to the Committee and request its endorsement at any meeting held for the endorsement of candidates. The time allowed for such speeches shall be determined by the Chairperson, who in making such determination shall consider only the total

number of persons seeking to speak and the time reasonably required to complete the business of the meeting. All such speakers shall be given equal time.

The Chairperson shall publicize the date, time, place and purpose of any endorsement meeting and invite all persons interested in endorsement to contact the Chairperson and to present themselves at the meeting. All persons who inform the Chairperson of an interest in endorsement shall be supplied a copy of the names and addresses of all known members of the Endorsement Committee, subject to a reasonable charge for copying.

Notwithstanding the right of all potential candidates to speak before the Committee, only those persons who are thereafter nominated and seconded from the floor, by persons eligible to vote at the meeting, shall be considered for

endorsement.

14. Voting by Committee; Secret Ballot; Nominating Speeches. The first candidate(s) for any office to receive the votes of more than 50 percent of the registered delegates shall be the endorsed candidate(s) for that office. In the event no candidate for an office is endorsed on the first ballot or fewer candidates are endorsed for a particular office than the number of seats available there shall be a runoff between the top two candidates for each unendorsed office or seat. If for any reason no candidate for a particular office or seat can receive the vote of more than 50 percent of the registered delegates, the top two vote-getters for the office or seat shall be treated as if endorsed.

When an office has more than one seat available the number of votes cast by each delegate for that office generally shall

correspond to the number of seats available. However, on motion made and seconded and carried by voice vote, each seat may be considered separately as if a separate office.

Any candidate failing to be endorsed shall be entitled on request to an additional ballot. If on this additional ballot the candidate receives the vote of at least 30 percent of the registered delegates, the candidate shall be entitled to run in the same column as the endorsed candidates but without the same slogan. A vote of greater than 50 percent on the additional ballot shall not entitle any candidate to be endorsed.

With respect to all offices or seats for which there is a contest, the vote shall be conducted by secret ballot.

Whether there shall be nominating or seconding speeches, and the length of such

speeches, shall be determined by the Chairperson, except that in any contested race each nominator shall be entitled to speak for no less than three minutes.

15. Registration of Delegates. Every delegate (including voting alternates) present at any meeting shall be identified and registered by name, address and signature. The total number of delegates so registered shall be the denominator of any fraction used to determine a percentage vote pursuant to these Rules.

16. Date, Time and Place of Meetings: Notice. The date, time and place of all meetings of the Endorsement Committee shall be determined by the Chairperson subject to the following limitations:

(a) all known members of the Endorsement Committee shall receive notice of any meeting in a writing mailed no later than the 13th day before the date scheduled

for the meeting; and

(b) No meeting shall be scheduled later than the 5th day before the last day for the filing of candidates' petitions.

17. Submission of Delegates and Alternates. Each municipality shall submit to the Chairperson a list of the names and addresses of all its regular and (30) days after receipt of all such lists, the Chairperson shall submit the lists together with the names and addresses of his or her appointments to the Credentials Subcommittee. Within this same period of time the Chairperson shall compile a master list of delegates and alternates and distribute copies of same to municipal chairs and club presidents.

VERIFICATION

State of New Jersey
County of Mercer

I, STEPHEN A. KOCZAK, plaintiff in the above-entitled action, being first duly sworn state that I have read and subscribed to the foregoing complaint, and the facts set forth therein are true and correct.

/s/ Stephen A. Koczak

(Notary)

VERIFICATION

I, JOHN G. RESCH, plaintiff in the above-entitled action, being first duly sworn, state that I have read and subscribed to

the foregoing complaint, and the facts set forth therein are true and correct.

/s/John G. Resch

(Notary)

VERIFICATION

I, KATHERINE E. ROTTER plaintiff, in the above-entitled action, being first duly sworn, state the I have read and subscribed to the foregoing complaint, and the facts set forth therein are true and correct.

/s/ Katherine E. Rotter

(Notary)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AFFIDAVIT

STEPHEN A. KOCZAK, et al.

Plaintiffs

v.

G. DALLAS DIXON, et al.

Defendants

State of New Jersey

County of Mercer

Stephen A. Koczak, of full age being duly sworn according to law upon his oath, deposes and says that:

1. I am one of the plaintiffs in the above referenced matter, and I make this affidavit in support of my application for a temporary restraining order.

2. I have personal knowledge of the facts set forth herein and, if called as a witness, I could testify competently thereto.

3. I am at present a registered Democrat, a resident of Trenton, New Jersey and a duly qualified candidate for the Democratic nomination for member of the U.S. House of Representatives from the fourth district of New Jersey.

4. I have found the procedures of the defendant Central Committee whose membership consists of, inter alia, the officers and members of the defendant county committee as well as representatives from area municipalities, elected Democratic officials who either reside in or represent Mercer County and 25 additional persons appointed by Chairman Dixon, to be window dressing for the manipulation of the primary process by a small number of incumbent officials and functionaries of the Mercer County Democratic Party.

5. As a direct result of the manipulation

of the primary process by the defendants, the selected Democratic standard bearers are given preferential treatment in terms of funding publicity and the like. In short, the establishment and operation of the endorsement scheme as more fully set forth in the Complaint filed herein contravenes the mandate of an open and free primary process, the importance of which was recognized by the New Jersey state legislature when it enacted N.J.S.A. 19: 34-52.

6. It is further my understanding that the printing and distribution of the sample ballots for the June 3, 1986 primary will take place within the next week or two.

7. On April 2, 1986, the defendant central committee met and endorsed the candidacy of defendant Laurenti. It is my understanding that defendant Laurenti and the other candidates who have received

similar endorsements, have asked that their names on the ballot be accompanied by a slogan identifying them as the "Regular Democratic Organization" candidates.

8. In the event that the aforesaid ballots are distributed to the public my candidacy will be irreparably harmed by this manipulated endorsement of my rival since I am running without the endorsement of the local democratic party and organization; and my campaign will be prejudiced thereby in the eyes of the electorate. Accordingly, I respectfully request that the temporary restraining order prayed for the the Complaint issue pending a hearing on plaintiffs' application for a preliminary injunction.

/s/ Stephen A. Koczak

(notary)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS

STEPHEN A. KOCZAK, et al.,

Plaintiffs,

v.

G. DALLAS DIXON, et al.,

Defendants

This matter being opened to the Court by Brener, Wallack & Hill attorneys for the plaintiffs on telephone notice to Counsel for the various defendants, and the Court having considered the duly verified Complaint, the Affidavit of plaintiff Stephen A. Koczak, and the arguments of counsel and good cause having been shown;

IT IS ORDERED that:

1. Defendants G. Dallas Dixon, the Mercer County Democratic Committee, the Mercer County Democratic Central Committee,

Jeffrey Laurenti, Howard Kaye, Gerard Stockman, Louise Lomma, their agents, employees, successors, attorneys, and all those in active concert or participation with them from organizing and operating the Mercer County Democratic Central Committee or any other similar committee or organization with the purpose of screening, nominating or endorsing a candidate or candidates for office in the upcoming Democratic primary elections in Mercer County prior to the happening of said primary, or from otherwise actively participating in any manner whatsoever including, without limitation, holding meetings, making public statements, publishing materials or using party assets in the aforesaid primary election campaign on behalf of a particular candidate or candidates, except as individuals acting as individuals.

2. Defendant Jane Burgio, Secretary of State of New Jersey is restrained and enjoined from placing or printing on the ballot for the June 3, 1986 primary election any slogan or statement which identifies, indicates or implies in any manner whatsoever the endorsement by the defendants Mercer County Democratic Committee, Mercer County Democratic Central Committee or by the "regular" Democratic county organization of a particular candidate or candidates.

3. Defendant Jeffrey Laurenti is restrained and enjoined from submitting or prosecuting any such slogan or statement to or with the defendant Secretary of State, Jane Burgio, or from displaying, publishing or communicating such a slogan or statement on signs, press statements or in campaign literature which identifies, indicates or implies that defendant Laurenti is endorsed

by the defendants mercer County Democratic Committee, Mercer County Democratic Central Committee or by the "regular" Democratic county organization.

4. Defendant W. Carey Edwards, Attorney General of New Jersey and Thomas H. Kean, Governor of the State of New jersey are commanded to enforce the state statutory scheme as written with regard to the regulation of the election of Senators and Representatives in Congress.

5. The defendants show cause before this Court, at the Federal Courthouse, Trenton, New Jersey on _____, the _____, day of _____ 1986, at _____ o'clock __. m. or as soon thereafter as counsel can be heard why a preliminary injunctive order should be issued enjoining and restraining the defendants in the same manner as the temporary restraints provided for hereinabove.

6. The temporary restraints contained in this order shall expire on the return date hereof but not exceeding 10 days from the issuance of this Order, unless within such time the Order is extended for good cause shown, or unless the defendants consent to an extension.

7. A copy of this order shall be served on the defendants hereinbefore mentioned within _____ days from the date hereof by the United States Marshall.

/s/

Date:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SUPPLEMENTAL AFFIDAVIT

STEPHEN A. KOCZAK, et al.,

Plaintiffs,

V.

G. DALLAS DIXON, et al.,

Defendants

State of New Jersey
County of Mercer

STEPHEN A. KOCZAK, of full age being duly sworn according to law upon his oath, deposes and says that:

1. I am one of the plaintiffs in the above referenced matter, and I make this Affidavit in support of plaintiffs' application for a temporary restraining order and preliminary injunction.

2. I believe that the electoral procedures utilized by defendants Dixon and the Mercer County Democratic Central

Committee are false and misleading for the following reasons:

3. When I began considering seeking the candidacy for the office of Member of the House of Representatives from the Fourth New Jersey Congressional District, I was made aware that the laws of New Jersey forbade a county or municipal party committee from endorsing candidates prior to the primary.

4. When choosing the slogan, or text, to appear after my name on the ballot, I selected the three words, "Regular Traditional Democrat," so as to indicate that I had not been endorsed by the Mercer County Democratic Committee or party organization.

5. I was not aware, nor were the Democratic registered voters who indicated they would sign my qualifying petitions aware, of the existence of a separate

Democratic Central Committee, the purpose of which we later discovered was to nominate and endorse candidates prior to the primary in circumvention of the New Jersey election laws.

6. I first learned of the existence of the Central Committee and of the fact that the Committee had endorsed my opponent, Jeffrey Laurenti, at its convention on April 2, 1986, from newspaper accounts of the convention and of a lawsuit filed by Gertrude Dubrovsky in the New Jersey Superior Court challenging the actions at the Central Committee, which report appeared in the local papers on April 3, 1986.

7. I telephoned Gertrude Dubrovsky to ascertain the facts and later communicated with her attorney to ascertain whether I should join that suit to assure "standing." I was told my participation was not

necessary since "standing" was not an issue.

8. I understand that the convention of the Democratic Central Committee was moved forward from April 16 to April 2, 1986 and that no advertisement was placed in the press to invite any potential office seekers to appear before the convention. Accordingly, only the inner circle of the Mercer County Democratic party leadership was aware of the convention being called to nominate Jeffrey Laurenti. There being no opposition to his candidacy, Mr. Laurenti was endorsed by acclamation.

9. I did not realize until April 14, 1986, when I saw for the first time a copy of a letter brief filed by Mark Setaro, Esquire, attorney for G. Dallas Dixon and the Democratic Central Committee in the state court action that the constitutionality of N.J.S.A. 19-34-52

would be challenged by the defendants therein. At that time, I was told that the matter was to be taken up at a hearing on April 22, 1986.

10. It is further my understanding that the Judge in the Dubrovsky case did not specifically address the issue of the constitutionality of N.J.S.A. 19: 34-52, nor the other constitutional issues raised in this matter in ruling on plaintiffs' application for a temporary restraining order and preliminary injunction.

11. I immediately proceeded to seek legal counsel conversant with the Constitutional issues involved, particularly Article 1, Sec. 2, Cl. 1, and Article II, (sic) Sec. 4, Cl. 1.

12. I learned that Laurence Elgin, Esquire, was reputed to have expertise in these matters and on April 28, 1986, three working days after I learned of Judge

Levy's decision dissolving the Order to Show Cause, I engaged Mr. Elgin to prepare the instant lawsuit.

13. Since Mr. Elgin is not admitted to practice in the Federal District Court of New Jersey, I subsequently communicated with Mitchell Neider, Esquire, of Brener, Wallack & Hill to request that he act as local counsel.

14. Because of the complexity of the issues involved, both Mr. Elgin and Mr. Neider worked assiduously to prepare the pleadings in this matter. I repeatedly urged speed on them and they assured me that they were proceeding as rapidly as possible.

15. I firmly believe and will so testify that I have proceeded with the greatest celerity to bring my Complaint before the Federal District Court once I had been able to discover the fraud and deceit which had

transpired.

/s/ Stephen A. Koczak

(notary)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CIVIL ACTION

DOCKET NO. 86-1856 REC

NOTICE OF MOTION FOR A STAY OF THE JUDGMENT OF UNITED STTAES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

(Caption)

PLEASE TAKE NOTICE THAT plaintiffs Stephen A. Koczak, Katherine E. Rotter and John G. Resch by their attorneys Brener, Wallack & Hill, Joel D. Rosen and Mitchell Neider appearing herewith move this Court for an Order:

1. Staying the judgment of the United States District Court for the District of New Jersey dismissing the above entitled matter for want of a federal question pending appeal to this Court.

2. Enjoining certain unconstitutional election practices as well as the primary election scheduled to be held on June 3,

1986.

3. For such further relief as the Court may deem equitable and just.

This motion is based on the Memorandum of Points and Authorities and the Affidavit of Counsel served and filed herewith.

Brener, Wallack & Hill

/s/ Joel D. Rosen

/s/ Mitchell Neider

Dated: May 29, 1986

MOTION TO DISMISS

Letterhead of:

COHEN, SHAPIRO, POLISHER, SHIEKMAN & COHEN
150 West State Street
Trenton, New Jersey 08608

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(caption)

TO: Mitchell Neider, Esquire
BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540

PLEASE TAKE NOTICE that on May 21, 1986, at 4:00p.m., or as soon thereafter as counsel can be heard, Leonard Fishman, Esquire, of the firm of Cohen, Shapiro, Polisher, Shiekman and Cohen, appearing for Defendants mercer County Democratic Committee and G. Dallas Dixon, will move this Court at Courtroom No. 2, United States Court House, 402 East State Street, Trenton, New Jersey, as follows:

1. To dismiss the action because the Complaint for Declaratory and Injunctive

Relief and for Damages for Violation of Constitutional and Civil Rights (the "Complaint") fails to state a claim against the Defendants upon which relief can be granted.

2. To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter.

3. To dismiss the action on the ground that Plaintiffs' request for relief is barred by the equitable doctrine of laches.

At the hearing of this motion, the Defendants will rely upon the letter brief attached hereto and made a part hereof.

COHEN, SHAPIRO, POLISHER, SHEIKMAN & COHEN
/S/ Leonard Fishman, Esquire

EXERPTS FROM TRANSCRIPT OF
INITIAL HEARING, MAY 12, 1986

MS. KELLY-BOCCHER: June 3rd, your Honor.

THE COURT: June 3rd. All right. I don't know whether it is in your brief for the moving party, but injunctions being of the, of there -- of necessity, equitable in nature, I have to recognize that you just may, even if you are entitled to relief, number one, have waited too long, because the complaint certainly relates that there are facts here which were known or certainly should have been known by you long before the very eleventh hour, the eve of election, and for me to, a week from tomorrow, if I ruled in favor to disrupt a primary election, would be quite a happening. Let's put it that way.

And secondly, the relief here is primarily based on the violation of a State

statute, and I am not too sure, and I have not read the cases that you are going to brief me with and so forthe, but just from the top of my head, and I am not ruling and I am not making any decision, I am very concerned that if what you say in this complaint is true, that you should not be before a State Court judge, since it does not make out a violation of 1983, 1985, to say that a State statute has been violated, therefore, you are being denied due process of law, equal protections, or whatever else. ...

...

THE COURT: Well, I will deem the complaint amended as of this time to include him as a party defendant. You are to file an order to that effect. And you can serve him along with an amended complaint at a later time, for present purposes, I will entertain your application and grant amending the complaint to include him as a party defendant. You will have to also serve him. All right.

But what I said previously still is of some concern to me, the ballots, the horse is out of the stable almost and we are looking to close the barn door here.

MR. NEIDER: I am advised by my client, your Honor, that in addition to Mercer County, the district covers three additional counties, and so accordingly, it would be necessary to join the clerks of three additional counties.

THE COURT: What are the other counties that the --

MS. KELLY-BOCCHER: The 4th Congressional District includes Monmouth, Middlesex and Burlington.

THE COURT: All those clerks have to be -- and the motion is granted as to each of those three as additional party defendants. Submit an order to me, and I will sign it. And at a leter date, we will amend the complaint.

MS. KELLY-BOCCHER: It may also include Ocean County. I don't know that for a fact, but the plaintiff should obviously check that out.

CAPTION

ORDER TO SHOW CAUSE

Trenton, New Jersey
May 21, 1986

BEFORE: THE HONORABLE ROBERT E. COWEN, U.S.D.J.

APPEARANCES:

BRENER, WALLACK & HILL
BY: MITCHELL NEIDER, ESQ., and
LAURENCE A. ELGIN, ESQ., (D.C. Bar),
For the Plaintiffs.

W. CARY EDWARDS, ATTORNEY GENERAL,
BY: DONNA KELLY-BOCCHER, D.A.G.,
For Defendants Governor Kean, Secretary of State, Attorney General of New Jersey.

PAUL T. KOENIG, ESQ.,
For Defendant Mercer County Clerk

GLEN FILIPPONE, ESQ..
Assistant Burlington County Prosecutor,
For Defendant Burlington County Clerk.

LEONARD FISHMAN, ESQ.
For Defendant Jeffrey Laurenti.

MARK SETARO, ESQ.,
For Defendant Jeffrey Laurenti.

WALTER BLISS, ESQ.,
For Defendant Gerald Stockman.

THE CLERK: In the matter of Koczak, et al., vs. Dixon, et al., 86-1586. Please make your appearances for the record. For the Plaintiffs.

MR. NEIDER: Mitchell Neider of the firm Brener, Wallack and hill appearing as local counsel on behalf of the plaintiffs.

MR. ELGIN: Laurence A. Elgin, appearing as counsel entered pro hac vice on behalf of plaintiff aling with Mr. Neider.

MS. KELLY-BOCCHER: Donna Kelly-Boccher, Deputy Attorney General for defendants Governor Kean, Attorney General Edwards and Secretary of State Burgio.

MR. FISHMAN: Leonard Fishman, Cohen, Shapiro, for defendants Dixon and the Mercer County Democratic Committee.

MR KOENIG: Paul Koenig, Jr., Mercer County counsel on behalf of Mercer County Clerk Albert Gerard.

MR. SETARO: Mark Setaro on behalf of

Jeffrey Laurenti.

MS. FILIPPONE: Glen Filippone, Assistant Solicitor for Edward Kelly, Burlington County Clerk.

THE COURT: All right. Gentlemen and ladies, I have read all of the moving and opposing papers. Let me ask, there is also a motion filed to dismiss. Do you want to consolidate and hear all these matters in one fell swoop? I assume the defendants do. Is the plaintiff of that mind as well?

MR. ELGIN: We, of course, have not, let me state for the record, we have not had an opportunity to oppose the dismissal motion, but we will waive any objection.

THE COURT: All right. In other words, we will deal both with the, with your application for a preliminary injunction as well as for defendants' cross-motion for dismissal.

MR. ELGIN: Yes. I would ask the Court

that if the dismissal motion should be granted, that we be permitted to file a brief subsequently in order to have something to appeal on, some opposition to it.

THE COURT: No, I am not going -- I am either going to hear it or not going to hear it. I am not going to hear it and rehear it based on briefs filed subsequently. I am prepared, I have read every piece of paper in the file that has been submitted. If you don't want me to hear the motion to dismiss, I will not hear it.

MR. ELGIN: Okay. We will waive the objection, your Honor, too, and consolidate.

THE COURT: So, as I understand, all parties are in agreement that not only will I hear the application for a preliminary injunction, but I will hear the cross-

motion to dismiss. Is that correct? If there is any deviation from that, please voice your objection. Hearing none, then I am going to bring on for hearing both applications.

All right, The main problem, quite frankly, I have with this case and I believe I expressed it when it was originally brought in on a TRO application, was that I would like to hear the plaintiffs speak to that with a little bit more clarity. Of course, I am appreciative of the Federalist papers. I have read what you have given to me, I read them in college, but we are not dealing in history here, we dealing in law, and even a new judge like myself doesn't want to get reversed. Let's put it to you that way.

Would you tell me specifically what the predicate is for federal jurisdiction to issue an injunction or even hear this

matter.

MR. ELGIN: Yes, your Honor. I will. A State statute which regulates the times, places and manner of electing Senators and representatives in Congress is not a State statute like any other. Such a statute is unique in the federal system. It is passed pursuant to delegated federal authority, authority that is delegated by the constitutional provision we have cited, Article I, Section 4.

The authority is thus delegated as part of the foundation of our federal system, and without that delegation, Congress itself, of course, would by national laws set the procedures for electing its own members as do the State legislatures by law at the present time

So when a State legislature passes a comprehensive statutory scheme such as Title 19 of the New Jersey Statutes

Annotated governing all races within the State for both State and federal offices, only the portions of that scheme that deal solely with races for State office are just State law. Those parts of Title 19 of the New Jersey Statutes Annotated which regulate the times, place and manner of electing members of the national Congress are first and foremost federal law.

THE COURT: Let me see if I understand you correctly. What you are saying then in effect is that the State election laws which have been passed by this State, for that matter any state, when applied to Congressional or Senatorial elections are federal laws?

MR. ELGIN: Yes, your Honor.

THE COURT: All right. I understand your position.

MR. ELGIN: It is not correct to say, (as Mr. Justice Miller said, for the unanimous

Supreme Court in 1884 in the case we have cited, Ex Parte yarbrough,) that the right to vote for a member of Congress does not depend on the Constitution of the United States. The office is created by that Constitution and that alone. Mr. Justice Miller then went on to say it also declares how it shall be filled--by election.

In the same opinion, in Ex Parte Yarbrough, which is 110 U.S. 651, at 663 and 664, page 660, he points to the power of Congress to regulate those elections under the times, places and manner clause. The delegation itself, of course, is in that clause and also in Article 1, Section 2, which is one of the sections that we cite extensively in our brief.

But if we grant that these things are mandated in this clear language in the body of the Constitution, the Court asks, is there a right to the benefit of the rights

secured by those two provisions, which was violated here so as to give the plaintiffs the cause of action which they claim?

I will argue in a moment the case authority which shows clearly that there is; but before doing that, we do want to point out one thing about the times, places and manner clause in particular which is essential to understanding how fundamental is the plaintiffs' cause and how serious these breaches of their constitutional rights are.

We refer the Court to the report on the statements of James Madison which we quote in our brief, in which he spoke of this clause, the times, places and manner clause, and of the delegation of the authority to the State legislators, saying that; "It was found necessary to leave the regulation of these. (the times, places and manners of electing Senators and

Congressmen) in the first place to the State governments as being best acquainted with the situations of the people." He then added, according to the reports of the constitutional debates, that this was, "subject to the control of the general government," (referring to the federal government,) in order to enable it to produce uniformity and to prevent its own dissolution..."

"Were they," he said, referring to these powers, "exclusively under the control of the State governments, the general government might easily be dissolved." This of course is from Farrand's Records of the Federal Convention, Volume 3, page 311, as quoted by the Supreme Court in U.S. v. Gradwell, 243 U.S. 476 at 484.

In other words, this power is delegated to the legislators of the states as the embodiment of the people's will and their

State governments', but subject always to the oversight and correction of Congress as the national representative body carrying out the national will. And this ability of Congress to oversee and when necessary in the national interest, to override the election laws of the states as they govern federal Congressional races, was deemed by the framers to be the glue binding the national union. Without this glue, as Madison said, the union might easily be dissolved.

Now, and this is the basic point of this whole present controversy, what if this power of Congress to oversee and, where necessary, recall this delegated federal power, is interrupted and cut off. What if even a small portion of the power to regulate the times, places and manner of electing members of Congress is taken from the State legislators against their will, and against the will of those who elect them. The people of the several states? How then can Congress oversee and recall the power thus wrested from the legislators against their will?

And so we have here a specific enactment of the legislature of New Jersey being circumvented. The Legislature has said to the political parties that they shall operate through certain official committees. It has decreed that these committees shall neither endorse a

candidate before the primary, nor finance any particular candidate, one against the other, within the party, before the primary. It has said you shall come to the starting line equal.

THE COURT: Well, the State has not denied that this is a valid subsisting statute, and I am not aware, from reading through the papers, that you have been foiled or in any way rebuffed at any application to require the defendants to heed to that statute. Isn't that correct?

MR. ELGIN: If I understand what your Honor has said, I would have to respectfully disagree. We feel that our clients, particularly our candidate client, has been disadvantaged by the very type of endorsement which the Legislature sought to prevent.

THE COURT: No. No, I think I may not be making myself clear or you are not

understanding my question.

MR. ELGIN: All right. I will try again.

THE COURT: My question is this. No one denies that this is the spoken policy of the State of New Jersey, and that it is a requirement for those who are in the elective process to follow. My question to you is, what makes this a federal case? No one in the State has said that this is not the State policy, we do not allow endorsements prior to the primary. As a matter of fact, the State has said in black and white that we prohibit them, and what rights are being denied that give rise to federal jurisdiction?

The State has said that what you are seeking, if it fits within the statute, is what you will obtain if you go into State Court. How do you first come to Federal Court on this claim?

MR. ELGIN: Well, because it is delegated

to federal authority and because, this is the point I was getting to, and because if this power which is shared by Congress and the State legislators and delegees is circumvented, the power of Congress as well as the State legislators is circumvented by this, this circumvention.

THE COURT: Couldn't the circumvention be cured, if indeed it is a circumvention, by going into State Court?

MR ELGIN: That might be the case, your Honor, but we would maintain that there is federal jurisdiction as well, because there has been, and we have cited in our brief a case of Smith vs. Allwright.

THE COURT: I don't see that that is exactly an point.

MR. ELGIN: Well, it is on point in this regard, that case involved predecessor statutes of the very ones we are suing under here.

THE COURT: We are not dealing with the same factual ---

MR. ELGIN: Not the same factual pattern but as to the question of whether there is federal jurisdiction for the violation of those rights secured by Article I, Section 2, and Article I, Section 4, both the Smith v. Allwright case, and also another case we have cited, Ex Parte Yarbrough, way back 100 years ago, in 1884, a little more than that, which also involved a predecessor statute of those we sue under, both said that those, the rights secured by those constitutional provisions, Article I, Section 2 and Article I, Section 4, when violated, give rise to federal jurisdiction under the civil rights statutes stemming from the Reconstruction times.

THE COURT: Under the factual -- but the factual predicate was different than the case before the Court here.

MR. ELGIN: That is true. I am citing it for the general proposition that these two provisions in the body of the COnstitution do give rise to secured rights which can be defended if violated and that violations of them can be prosecuted under the Civil Rights Acts. I understood the Court to ask that question.

THE COURT: All right. And the nub, of course, of your position is that a violation of any State election law concerning federal elections, federal elected officials, would give you a right to go into federal court in the first instance.

MR ELGIN.: That's right. And there is a further argument which I will give your Honor, and that concerns our 1st and 14th Amendment claims. I mean, let me deal first with the 14th Amendment claim, which is, of course, the Equal Protection

Clause. What we are saying there is quite simple. Once the State Legislature has proscribed pursuant to the constitutional mandate of Article I, Section 4, the State legislature has made the reasonable classification that can be made, any additional classification or alteration of the weight of votes or the degree of, say, an individual's say in the election of the candidate or the nomination of the candidate, is a scheme which the legislature has not proscribed, and therefore, it is per se violative of the equal protection that the legislature has decreed.

And the same is true for our First Amendment claims, freedom of association -- not mentioned in, but emanating from the First Amendment -- which concludes that the freedom of political association is a collation, if you will, of the First

Amendment rights of expression, as protected by the Due Process Clause and the right to speech and assembly as it pertains to political activity and the rights to petition for redress of grievances.

One way is to elect your candidate and have hopefully your programs carried out. Again, once the State legislature has proscribed, for a private body to change that proscription violates these rights. Once the proscription is set under the delegated federal authority by the legislature of the state, then just as in Yarbrough, with the statutes punishing criminal violations threatening, and so forth of the State election laws in that case, that becomes a federal right. Even though it is embodied in State law, that is a federal right.

THE COURT: What you are saying is that, and I am playing devil's advocate here at

this time, is that by reason of the violation of the defendant of State law, that you are being denied your due process and 14th amendment and First Amendment rights. Correct?

MR. ELGIN: That's correct.

THE COURT: I do not see how you ....

MR. ELGIN: I am not sure I understand your Honor's comment. Are you asking, are you asking or stating that there is no denial here that empowers the plaintiffs to go into federal court because they might get similar relief in the State Court on their federal rights?

THE COURT: I am saying, number one, any violation of the State law, let's take it out of not just the elective process but any State law touching upon something which has an association with the federal government, does not automatically mean that you are being denied due process,

equal protection, first or some other right.

MR. ELGIN: Of course not.

THE COURT: All right. And insofar as being denied those rights, I don't see how you are being denied them because if you prove the merits of the claim which you make here, those rights would not be denied. There would be no denial of those rights. There is a process by which those rights can be vindicated. I am not arguing concurrent jurisdiction. I am arguing to you, or stating to you, that had you been denied any federal right when the State has a remedy for the wrong which you claim is being committed.

MR. ELGIN: Plaintiffs' federal rights have been violated and may go to either forum. This goes way back, let's take an old case we have used, 1886 Yick Wo vs. Hopkins, the question of the ordinances in the city of San Francisco violating 14th Amendment rights because of the way they were administered or not administered to

varying groups. The same is the case here. Now, then our plaintiff clients discovered the by-laws of the central committee-it appeared that they were enacted in 1971. So for many years now, this practice has been going on. And we have cited the negligence part of the civil rights statutes. What have the State officials done to stop it? It appears that they are allowing it to happen and they know it is happening and yet is has been happening still, and they have done nothing about it.

THE COURT: I don't see that you have made State officials aware of something which is absolutely a violation of this statute from which they have turned -- to which they have turned a deaf ear.

MR. ELGIN: Are you saying that we should have sought extra-judicial remedies with the State officials?

THE COURT: I am saying I don't see there

is any denial here of anything, since if you are correct in your position that this central committee is just a way of getting around the statute, you are not being denied anything since the State, if they agree with your position, will remedy that situation and you will be denied nothing. You will not be denied First Amdnement political association, equal protections or anything else.

MR. ELGIN: Well, it is my understanding, forgive me if I am wrong, in a somehwat similar case in State courts, a plaintiff was -- well, of course it did not involve a U.S. Congressional candidate, but the essential evasion of the statutory scheme was the same and the relief was denied.

THE COURT: What case are you speaking of? I am not aware of any that was brought to my attention. And I researched it, I researched it independent of what was given

to me.

MR. ELGIN: Mr. Neider was the counsel in that case, I believe, your Honor. Maybe he can address it.

THE COURT: I will be pleased to hear it from him.

MR. NEIDER: Your Honor, there is a case currently pending in the New Jersey Superior Court in the Chancery Division in Mercer County entitled --

THE COURT: I don't read the Reports that thoroughly.

MR. NEIDER: Well, in fact there is no, there has been no reported decision issued at this point, the procedural status, the procedural status, the procedural status of the matter is that a complaint has been filed. Plaintiffs made an application before the Honorable Paul J. Levy for a temporary restraining order and additional injunctive relief, the theory being that

the Central Committee and the committee--well, the Central Committee was in fact the alter ego of the Mercer County Democratic Committee, and consequently, and endorsement, preprimary endorsement by the Central Committee was in violation of the State statute.

At this point in time the Judge has denied plaintiffs application for injunctive relief, and that is where the case stands at this point in time. Discovery is in the pretrial discovery phase. The judge has indicated that if the cases do continue, that there will be a pretrial conference and then a trial.

THE COURT: All right.

MR. ELGIN: What I was referring to, your Honor, is what Mr. Neider described as injunctive relief was denied in that instance, on the sole point, as I understand it, from reading Judge Levy's

opinion, that one committee was not exactly the alter ego of the other, that is to say, there wasn't exact congruence in membership, and I do not, of course, in our argument we do not consider that as the dispositive point.

THE COURT: I would agree with you.

MR. ELGIN: It seems to me it does indicate that perhaps the avenue of relief in the State Courts is not as open as your Honor would suggest here, particularly of course where a Congressional candidate is concerned.

THE COURT: All right. Anything else before I hear from the defendants?

MR ELGIN: Yes. There were several other questions raised by your Honor in addition to the federal jurisdiction question.

THE COURT: How about the laches problem? We are on the eve of election here, and the defendants claim they have already spent their money and printed their necessary papers, and while not acknowledging that they are doing anything wrong, they say that what they have been doing was not a secret, that you have known about it many, many months ago and that it is grossly

unfair for you to come into court when the die is already cast in the election, in effect.

MR. ELGIN: Well, let me respond to that. We have alleged that of course the plaintiffs did not know of these matters and the voting -- the general voting membership of the Democratic party did not know that this was going on.

THE COURT: I have to assume by the moving papers that you filed that you knew about it for quite some time.

MR. ELGIN: I think we have --

THE COURT: Or your client, put it that way.

MR. ELGIN: I believe we filed a supplemental affidavit of our client and he only discovered it when he read about the Levy proceeding, not the --no, the Dubrovsky proceeding before Judge Levy in the newspapers. This is when he first

discovered this was going on. Our client, he says this in his affidavit, he read the statutes and assumed they were being obeyed, I think as a citizen, I think as a citizen is entitled to do.

THE COURT: Well, I took it as a factual matter that, and I am not saying that what the defendants are doing is proper or improper, but whatever they are doing, I certainly came away from these papers with the thought, now I might be in error, that it was well known that the Central committee existed and that while the membership was not exactly the same, that there was a great deal of similarity, and especially in higher echelons of the committees.

MR. ELGIN: Well, of course what we are referring to in the supplemental affidavit is that our clients discovered this within recent weeks, because of the Levy

proceeding being covered -- I mean the Dubrovsky case, being covered by the newspapers, and they immediately moved to do something about it. They communicated with the plaintiffs in that case, attended, (our candidate plaintiff), attended the hearings involved and the constitutional question was raised there almost in the same form it is raised in the brief filed by Mr. Fishman before us now, and yet when he went to the hearing I believe on the 22nd of April the constitutional question was avoided and the entire matter was disposed of with regard to equitable relief on the basis of --

THE COURT: When did your client know of the endorsement by the Central Committee?

MR. ELGIN: The endorsement?

THE COURT: Yes, he knew about that several, many, many, many weeks ago, months ago. I think it was, you know, several

months ago he knew about it.

MR. ELGIN: Your Honor, I don't think we covered that and perhaps it was an oversight in the affidavit of my client, my plaintiff client -- my candidate client informs me he learned of it when he read of the endorsement in connection with the proceeding before Judge Levy. He has told me previously, and I believe we have this in the affidavit, I first learned of the, quoting from the affidavit, of the existence of the Central Committee and of the fact that the committee had endorsed my opponent, Jeffrey Laurenti at its convention of April 22, 1986, from newspaper accounts of the convention and of a lawsuit filed by Gertrude Dubrovsky, new Jersey Superior Court, challenging the actions of the committee report appeared in the papers on April 3rd, 1986.

THE COURT: All right, let me ask you, I am

sure the defendants are going to raise the point, the expense involved in printing the ballots and so forth, what do you have to say about that?

MR. ELGIN: Surely, could I finish on laches?

THE COURT: No problem, certainly.

MR. ELGIN: I am sorry.

THE COURT: Please do.

MR. ELGIN: I wanted something on the record.

THE COURT: Yes.

MR. ELGIN: Laches is an equitable doctrine and the burden is on the party that asserts it, and of course, we have two maxims in equity that operate here. One, you must come into equity with clean hands, and second, he who seeks equity must do equity.

We would assert that when you -- and we have a case supporting the use of those

maxims in the Circuit from new Jersey, that is Neely, N-e-e-l-y, vs. Merchants Trust Company of Red Bank, 113 F. 2d 953, which mentions both of those maxims of equity -- we would maintain that there is no equitable right to continue with activities that essentially evade both the State statute and a constitutional mandate. There certainly is no such right in this circuit to cite one of the cases that they cite in bringing up laches, the University of Pittsburg vs. Champion Products, Inc. That case dwells on two questions: delay and prejudice to the defendants - let me speak to delay for a minute.

One of the elements in that question is : is there a statute of limitations that has been violated. of course there are no statute of limitations here where basic consititutional rights are involved. And secondly, they speak of, in that case which

involves a trademark situation: is there an abandonment; has there been an abandonment of the right over this time?

Here there has been no abandonment. Our clients just discovered their rights were being violated and acted fairly promptly.

Going on to the prejudice, which is the damages, or the cost of reprinting the ballots, that your Honor mentioned.

THE COURT: And the deadline of the election.

MR. ELGIN: And the deadline of the election which is soon upon us. I think that the Court should take into account, with all respect, a balancing of the equities, and we have been given here, we have just received material we received yesterday and today, the cost estimates by the various county clerks, but I note that the attorney, Assistant Attorney for Ocean County who filed, indicated that the

actions of his county clerk were purely mandatory. He was just carrying out the decision of the defendant state officials.

And in balancing, of course we have to consider the cost to both sides. Now, the other side, in one of the briefs filed has made light of our claim that there are publicity costs. I find that astounding in this day and age. If necessary, we can get a media consultant expert who worked some political campiagns. But I call the Court's attention to the fact that it is well known that campaigns and media costs are very, very expensive. And what is the cost of overcoming this, what we maintain is an illegal endorsement practice and, it has a cost. I mean, the candidate who seeks to go against it; against this practice has to buy the publicity, the exposure to make up for that free exposure from the endorsement.

Just to refer to something that is, you know, something the Court can recognize: the Federal Election Campaign Act, for example, passed in 1971, had a limit on expenditures for House campaigns of $168,000. at that time it was considered reasonable. That was struck down in Buckley v. Valeo, a case we cited in 1976 by the Supreme Court, and it is well known in the figures from the Federal Election Commission show since then the average cost has gone to more than twice that, some are up over a million dollars now.

So this is not cost-free to the party who is damaged by the improper practice. And in fact I would maintain that the cost to our client to overcome this will be greater thatn the cost to the State of redoing these ballots. But then again there is a question of: is there a right to continue an unconstitutional practice, if it is

unconstitutional as we allege, because of this cost? I mean, in other words, is there an argument: "we have gotten away with it thus far, we should get away with it a good bit further."

Many of the cases we are citing come out of the civil rights movement. I was involved in that in a minor way and those arguments were tried there and they were not listened to. The fact for almost a hundred years, for example, in Mississippi they had been able to keep black people off the voting rolls so they couldn't be on the jury list - you couldn't get them on juries - so you had to reprint all the lists and redo everything. That wasn't considered a valid argument for not correcting the constitutional violations. And I don't think it should be here.

I don't think there is a right to keep on doing it, in effect, simply because -- and

let me point out for the record, your Honor - that whatever notice they had or did not have, a good bit of what is going on here, according to these affidavits, is what they are continuing to do after they have received their copies of the moving papers and our complaint, and it seems to me at the very least they should be extremely circumspect and not just keep on doing these things without thoroughly examining whether or not they are in compliance with the State statute and the federal Constitution and the Federal Civil Rights Laws.

THE COURT: All right. Let me hear from the defendants, please.

MS. KELLY-BOCCHER: Very quickly, your Honor, there is no federal jurisdiction in this case. I have looked at the moving papers, and I see no federal question. I see no allegation that any constitutional

rights have been or will be violated by the alleged illegal conduct of the private party defendants.

THE COURT: Well, they say that their political rights are being abridged and that their equal protections are being abridged because they are not being treated equally as anyone else who is vying for a position in the primary. And that is a violation of the 14th and First Amendments.

MS. KELLY-BOCCHER: When you are talking about an equal protection problem you are talking about some kind of statutory classification which impermissibly classifies like people.

THE COURT: No, they are not saying that there is a suspect class. They are saying that in the manner in which the defendant has gone forward, that the effect is to create two classes, primary candidates with and without endorsement. I am just

paraphrasing.

MS. KELLY-BOCCHER: I understand that. But the way in which candidates are nominated in the primary elections in our State is through -- is in the polling place, on Election Day, by all the qualified voters who are members of that political party and there is absolutely no allegation in this case that the voters on June 3rd, who are the members of the Democratic party, or opt to become members of the party on Election Day, will not have equal weight in terms of who they wish to nominate. All the votes will be equally counted. There is absolutely no allegation of any dilution of vote, or that anyone is being deterred from even getting into the polling place. I think that is the -- that should be the relevant inquiry for a federal court in terms of looking for any type of constitutional violation regarding

voting rights.

And what they are complaining about here may well be a violation of a State law. I do not take a position on that question, because I think that question should be addressed in the state court, not in the federal court.

THE COURT: All right. You disagree with plaintiff that the State election laws which react and provide for federally elected officials are not federalized.

MS. KELLY-BOCCHER: I don't understand the logic of that argument, your Honor. The State statute which is at issue here is a statute that was enacted by the State Legislature to apply to all of our elections in the State, federal, State, county, local or otherwise. The 10th Amendment clearly gives the power to the states to promulgate election laws. It is a statute promulgated or enacted by the State Legislature with the signing of the Governor.

I don't see how that translates into a federal statute to get oneself into federal court, particularly when, as I stated before, I see absolutely no allegation here that anyone's federally protected constitutional rights have been violated, because if they had, we would have had a sense of that, certainly the State's position would be different. But based on

the papers of the plaintiffs, I don't see that.

THE COURT: Maybe they are being violated but you are not perceiving that. Plaintiff puts it this way, that his federal rights are being violated because he wants to be a federal official, but by reason of the manner in which the State law is being administered, or not being administered, he is unable to vy for a position with people who are in violation of State law. Therefore, what could be more federal than the inability to get elected or to vote for someone for federal office on equal terms, and with equal endorsements?

MS. KELLY-BOCCHER: That may be a political problem for the plaintiff. I don't see it as being a constitutional problem. The plaintiff has been duly certified, he is on the ballot. He is not being restricted in any manner to conduct

his campaign as he sees fit, to even go to tell the voters of the 4th Congressional District that my opponent is violating State law by this endorsement. And the other problem I have --

THE COURT: Just a minute. What do you mean he is not being restricted? He is in a 100 yard dash with lead weights around his feet. He is running for election, and the name of the game is who is in back of you, who your supporters are, who your endorsers are.

MS. KELLY-BOCCHER: That is a political matter for him to go out and get support however he chooses.

THE COURT: But the support is from a primary, is from a committee which is not supposed to endorse anyone until the primary comes in and then we all in the party endorse the party's candidate.

MS. KELLY-BOCCHER: And that is what will

happen on June 3rd, your Honor. All the qualified voters of the 4th District will have the right to go into the polls and it is the winner on that day who is going to be placed on the general election ballot in November.

THE COURT: But he says the results of that election are pre-ordained because he is running this race without, or let's put is this way, his opponent is running the race with the endorsement which is going to make him look not as handsome a candidate as someone who has the endorsement of the Democratic party for Mercer County.

MS. KELLY-BOOCHER: I sincerely believe that does not translate into any federal matter for this Court, and the other problem I have in terms of there even being State action here, is that I am not too sure I understand the nexus between the alleged illegal endorsement and the relief

that the plaintiffs are seeking. They want the slogan of Jeff Laurenti to be stricken off of the ballots, but yet our State law provides, as the State has set forth in its brief, that whoever comes in first with a slogan, and if it is not in effect owned by any incorporated association or it mentions the name of a person, that individual is entitled to use that slogan on the ballot. And furthermore, that a candidate has a right to ask to be grouped with other candidates in terms of bracketing. Now, Mr. Koczak did not -- chose not to use the slogan, besides the fact that he also factually, according to the affidavit of George Bloom, submitted his nomination petition within hours of Mr. Laurenti, but he chose not use that slogan, and how -- the manner in which Mr. Laurenti presented his petition with a slogan, as it has been reviewed by the Secretary of State's

office, there was no violation of State law to permit the Secretary to --

THE COURT: He was first to come with the name so it is his trademark.

MS. KELLY-BOCCHER: So to speak. And I really do believe that the State has met its burden of its laches defense in this matter, beyond the fact that I don't believe that this is a matter properly for State Court. The supplemental affidavit submitted by Mr. Koczak clearly states he knew April 3rd, beyond the fact that the complaint said we have known for years that this Central Committee has been endorsing candidates.

THE COURT: Yes.

MS. KELLY-BOCCHER: And he, as a candidate, knew about the filing deadline, he must have known about the drawing deadline and he did nothing, and now we are one week away from the requirement under

State law that sample ballots be sent our to all the voters to allow them a week to review the ballot for purposes of making their decisions to vote.

I think the burden that will be placed on the county election officials is absolutely unwarranted. I mean, in Mercer County alone, the deputy county clerk stated if I had to redo all of my ballots, sample, absentee and the machine strips, it would cost the county $61,499. What they are asking us in effect is to jeopardize compliance with other State statutes. The requirement that sample ballots be sent out by next Wednesday.

Mr. Kelly of the Burlington County Clerk's Office indicated that cannot be done if I have to go back to the printer to have them change the sample ballot. We have already -- some counties have already had their candidate's inspection of the machines.

That was done yesterday in Middlesex County. If Middlesex County had to redo its 34 machines, which they contend they could not do in time, that now jeopardizes whether or not we can have a candidate's inspection and all the candidates who are on the ballot for the 4th Congressional district have to see the machines before they are locked and sealed.

And this also threatens unnamed parties to this action, because the ballot does not simply have Congressional candidates on it. There are local seats, there may be county seats, there may be State seats. None of those people have been notified. Even the Republican Congressional candidate who certainly has an interest here, he is not -- he also, his rights have also been threatened, and he is not here in court to give his piece, so to speak.

It us just unjustified, your Honor. It

this were a case where they had a real claim, that would be one matter. If it was a federal claim, that would be one matter, but there is no federal constitutional rights being violated, according to their own allegations of the plaintiffs, and it is just too late to ask the election officials in the 4th Congressional District to just throw everything out and really waste taxpayers' money, without there being any just cause.

THE COURT: All right.

MR. FISHMAN: Your Honor, I want to make a point of not repeating the points that Ms. Kelly Boccher has already addressed, but I want to address myself specifically to the leading argument that I think counsel for the plaintiff has made, which is that somehow the United States Constitution pursuant to Article I, Section 2 delegates the federal election process to the states,

whereas your Honor has put it, federalizes the State election process.

What that article says is, "The House of Representatives should be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Now, what Congress has done, or what the federal government has done through the United States Constitution is not delegate federal election authority. It adopts certain State regulations. What is says is, to the states, State of New Jersey, when you tell you citizens how they are going to elect a general assembly, the popular branch of government, those same requirements for electors shall apply to members on Congress, and that is it.

The federal government knows how to pass regulations to regulate federal elections when it wants to. It did that at Smith vs. Allwright, and Gomillion vs. Lightfoot, in Ex Parte Yarbrough, for example. In Ex Parte Yarbrough, the Supreme Court made the point that I had just made, which is that the federal government says we are going to adopt the qualifications for electors of the most numerous branch for our House of

Representatives.

The problem with plaintiff's argument is that is proves too much, because if plaintiff's argument is sustained, then New Jersey's election law, the whole thing, becomes federal law. Multiply this by 50 state statutes, because what plaintiffs are arguing is any time a State statute having to do with elections is violated, automatically, a candidate for federal office can point to that violation and say, well, it applies to candidates running for Congress, and therefore, it is a violation of federal law and raises federal jurisdiction.

I don't think that is what the U.S. Constitution had in mind. It selected particular regulations that should be applied both to state law and federal law, not all regulation, certain regulations. For example, qualifications fo electors of

the most popular -- for the House, or the most popular branch of government on the State level. I think that is as far as it goes.

For that reason, I think as I said, that not only does plaintiff's argument prove too much, but it would have the exact opposite impact that the Supreme Court was reaching in Ex Parte Yarbrough. In Ex Parte Yarbrough, the Supreme Court said we consider that there is an adiption of certain provisions by the federal government. Otherwise, every State will be free to run its own show.

What plaintiff's interpretation would result in is 50 seperate federal election laws, and that would truly deprive the federal government of a cohesive election process. In a couple of instances, there is a diffused -- there is some diffused responsibility in the federal level, and

not to beat a dead horse, in the matter that is at issue here, the federal government has done that with respect to the qualifications for electors of the House of Representatives. The plaintiff has not cited a single case that suggests that it is a violation of federal law to allow preprimary endorsement.

Now, the State of New Jersey has done that. It is clear, for example, the plaintiffs cannot bring this action in a federal district court, or a state court in Rhode Island, or in Connecticut, or in other states where not only are preprimary endorsements permitted, preprimary endorsements are promoted by the statutes there.

And defendants in our brief have cited some cases on point. For example, we cited the case of Gallant vs. LeFrance, which was a Rhode Island case, Rhode Island Supreme Court. There the statute expressly permitted and fostered pre-primary endorsements by the party committee. In fact, the statute there went so far as to say to the party committees, let the Secretary of State know who you endorse. We are going to put an asterisk next to their name so voters know who the endorsed candidates are in the primary election.

THE COURT: That doesn't necessarily make it constitutional, if it is a federally recognized violation.

MR. FISHMAN: That's correct, but your Honor, all a party can do is point to some precedent. Here is a case that said we are going to review whether this is a violation of federal Constitution. The

answer of Gallant vs. LeFrance was no. The issue rose again in Gage vs. Petrocie, again the Rhode Island Supreme Court.

Specifically the question was raised whether that procedure violated the Equal Protection Clause of the United States Constitution. Rhode Island Supreme Court says no. The issue was raised again in Fahey vs. Darigan. I am quoting cases that plaintiffs were kind enough to recite in their brief. In Fahey vs. Darigan, United States District Court for the District of Rhode Island, the Court reviewing the Rhode Island statute again said that the endorsement process is private, not public action, and therefore, the Equal Protection Clause of the 14th amendment is not implicated.

I would also point out that a Republican Party of Connecticut vs. Tashjian which was a case in the Second

Circuit, the Second circuit, Court of Appeals, the election law there was remarkably similar to the rules of the Mercer County Democratic Central Committee. Their endorsements were made through party conventions that endorsed candidates and a candidate who did not receive the endorsement was permitted to have runner-up status and to run in the primary election in opposition to the endorsed candidate. But there, if there was no opposition candidate there wasn't even a primary election held.

The point that I have tried to make by citing these cases, you Honor, is that the issue that the plaintiffs have come to this Court to raise has been raised before, and courts that have heard the issue have held that the endorsement process is private, not public, and they have held that there is no federal question

presented, at least to the extent it was raised in those cases, by a pre-primary endorsement. The states are free to choose whether there is going to be a prohibition or not against pre-primary endorsements.

New Jersey in its wisdom has chosen to prohibit them, although prior to 1930 they were not prohibited and for a couple of years, when 19:34-52 lapsed, again they were not prohibited in this case. I suppose it is plaintiff's position that the State of New Jersey was in violation of the federal, or the United States Constitution during the couple of years that the statute was lapsed.

I don't think that that point is sustainable, and I don't think that states that choose a scheme different than the one New Jersey has chosen are in any way in violation of the federal Constitution. What that means is that if a plaintiff

thinks that 19:34-52 has been violated then the place to get relief is in the court of the political jurisdiction that conferred that right, and the jurisdiction that conferred that right is the State of New Jersey, and it did it completely without regard to federal constitution or statutory rights.

And I think it is untenable to say that the federal government automatically adopts what New Jersey does with respect to its election laws, because as I said before, your Honor, if that is the case, we now have 50 federal election laws across the United States and I don't think that that is what the framers, or Congress had in mind.

In connection with, I just want to point out also that along the line of cases that have been referred to by plaintiffs, for example, Smith vs. Allwright, Gomillion

vs. Lightfoot, those cases dealt with deprivation of the right to vote or beating and/or intimidation or so on in violation of federal statutes, and in relation of the federal Constitution. Clearly you may not stop someone from voting and that would be a violation of federal law.

But again, the scheme erected by the individual states for pre-primary endorsements, yes or no, is a matter within the domain of each state. I am not going to deal with the laches arguments because I think that Ms. Kelly-Boccher has dealt with it more effectively than I could, but I want to add one piece of information, your Honor, in terms of the laches argument.

In the complaint it is suggested that plaintiff was aware that this process was going on for a long time on and annual basis. The supplemental affidavit says April 3rd. This matter, or a similar

matter was brought by another plaintiff in State Court, and the State Court was not impressed with the evidence as to the merits, namely, whether there was a violation of 19:34-52.

There is no reason that these plaintiffs, thinking a federal right had been violated, could not have come to this Court immediately if they learned upon that date that their federal rights had been violated. It is hard to believe that any Democrat in the county of Mercer, particularly one who rises to run for the United States House of Representatives is so little informed about how this, how a county political process operates as to become aware of it by reading it in the newspapers.

Be that as it may, assuming the supplemental affidavit to be true, still, a month and a half has passed since that

violation, or the alleged violation came to the attention of plaintiffs. So I just think that on its equitable doctrine of laches, that relief ought to be denied.

I think also that the plaintiffs have failed to state a claim upon which relief can be granted here because the relief the plaintiffs are asking for, which is to strip a candidate of his slogan is unrelated to the contention that an endorsement was made in violation of the statute. If we assume arguendo that candidate Laurenti was improperly endorsed, that is not translated to his slogan.

In fact, we have the ironic situation that the plaintiff Koczak tells us he picked a slogan because he wanted to make sure that nobody misunderstood that he was separate from the Mercer County political party. Well, he had the slogan that he wanted and this action in court no doubt is

reinforcing that opinion in the press, and that is his right. But it is also candidate Laurenti's right to chose a more conventional slogan, namely, regular Democratic organization.

As your Honor may know, it is typical on election, a contested primary election for candidates to choose one or the other because both are hugging the position that they have some relationship to the Democratic party organization, and that of course is permissible provided that they are not using a slogan that has been used by some other entity.

On that point, I want to make one last point. In the complaint, there is a tremendous confusion between the Mercer County Democratic Committee and the Mercer County party organization or the Dallas Dixon party organization. the only entity that is regulated by 19:34-52 is the Mercer

County Democratic Committee. If politicians in this court or activist democrats or a combination of the two get together to support candidates from a primary election they have a First Amendment right under the United States constitution to do that.

I think plaintiffs have not taken the trouble to sort out the various political entities in this county and that is critical. Because as the Court said in Gillen vs. Sheil, when you are looking at a statute that tells people that they may not meet to express their political beliefs as 19:34-52 does, it better be construed very narrowly.

And what plaintiffs here are trying to do is to paint the supporters of Chairman Dallas Dixon, and activist Democrats and Mercer County Democratic committee with the same brush and that is

simply inappropriate because the statute doesn't say that active Democrats may not meet to discuss political issues or endorse candidates. That would be a violation of constitutional rights. It says the county committee that is set up by statute may not meet, and it was that point that plaintiffs early, earlier plaintiff was unsuccessful in sustaining in the Superior Court law division. I think that covers the points I want to cover that have not been covered by Miss Kelly Boccher. Thank you.

THE COURT: Anything further from the defendants? Let me put it that way.

MR. BLISS: I am Walter Bliss, attorney for Senator Gerald Stockman. I appreciate your indulgence.

THE COURT: No problem, Mr. Bliss. I received your papers.

MR. BLISS: Thank you very much. Your Honor, certainly as to the Senator, I

have mixed feelings in pointing out to the Court, of course, as a Senator he is not a Democratic committee person. His compliance are not compliance with the endorsement statute. It does not bring into question his activity, per se and no specific duty charged to the Senator has been alleged to have been violated, or, nor has the Senator been alleged to be derelict in any way. I would request reluctantly because I think the merits are important, that regardless of the outcome of today's proceedings, the Senator be relieved of the burdens of further participation, except as an interested citizen together with the other citizens and Democrats of Mercer County.

As to the merits, your Honor, Mercer County Democrats have been struggling with the issues of endorsements and the role of the Mercer County Central Committee for some time. Senator Stockman has been very much in the center of that and will continue to be part of that debate.

But this suit fundamentally confuses the right to endorse or the lack of it with the right of candidates to run on a slate. If the clock could be turned back, and if the endorsement meeting of last April could be prohibited, could be wiped from the slate of history, so to speak, you would still have the same slate before you today on the, and on the ballot today regardless of the actions of that group. It is a form of ballot question. It goes to a specifically authorized right of candidates, any three or more candidates in the State to run together, as a slate, with a slogan of

their choice, given to them on a first come first served basis, as they arrive in the courthouse.

Whether the committee that met last April was properly endorsing a candidate or not goes to the whole issue of pre-campaign exposure, it goes to the fact that the candidates endorsed there got a morning's worth of free press the next day, but it does not go to whether or not those same candidates who at all times retained their own personal rights to slate themselves in any way they chose, the -- whether that endorsement or one day of free press of the pre-campaign recognition was lawful under State statutes does not overrule or does not pre-empt another State statute which permits this ticket precisely as it is presently constituted. Thank you, your Honor.

I certainly am impressed as a Democrat

with the presentation fo the counsel here today for the Mercer County Democratic Party, but I would request special consideration for the Senator's position, whose participation in this proceeding, formal participation is burdensome and I request a dismissal certainly as to his cause.

THE COURT: Anything in response that you would like to say shortly?

MR. ELGIN: Yes. Starting with the last first, Senator Stockman: the allegation is quite clear he is the man who moved the endorsement in the unofficial Central Committee.

THE COURT: And he is a member of the committee.

MR. ELGIN: He is a member of that unofficial Central Committee though admittedly not a member of the official committee. Going back to the m, proceeding

to the argument of Mr. Fishman, he only mentions Article I, Section 2, I suggest he read further to Section 4, there is a delegation.

THE COURT: Section 4, we are under Article I, Section 4. Other sections are -- have some interest, of course.

MR. ELGIN: Yes. We have cited the definitive case on that as Smiley vs. Holm, 1932, a unanimous opinion by mr. Chief Justice Hughes. The argument in that case was that the delegation only meant what the legislators did, it didn't include a gubernatorial veto. The Supreme Court said it did, it included everything.

So it is a delegation, and I would point out: this was the tail end of the argument I started with, that the implication of that then is quite clear, quite startling: That means that if a party group like the Central Committee can get around that, the

State restriction, then if Congress passes the law, say Congress passes the law nationwide for getting preprimary endorsements, all the parties can --

THE COURT: Congress has not spoken to preprimary endorsements.

MR. ELGIN: It has not. Supposing it has. When they eliminated starting with eliminating different election duties , going on to uniform dates with Congressional elections in the 1870's, coming up to the Buckley vs. Valeo case, pulling back power - Congress takes. Buckley vs. Valeo discusses that.

I won't get to the Rhode Island cases except to mention the Rhode Island Legislature chose to keep the endorsement process private. The New Jersey legislature has chosen the opposite. It is entitled to do so.

An endorsement is an official act, with

authority, and we cited Smith vs. Allwright, followed by many cases, that comes ultimately from the state. It is not a private function like it was a refreshment committee or something. This is the electoral function. The Tashjian case we have cited, again, I ask my opponent to read that. Connecticut is one of three states that does not use the primary to select its nominees. It uses a system, which the Legislature has passed, of conventions.

The key point, though, and this is one that seems to have fallen by the wayside here, is that what we have here is a classic deception. if I may make an analogy, it is like Government Employees Insurance Company, as it started out, now known as GEICO because the federal authorities stepped in when GEICO creates subsidiaries; the federal government

stepped in and said: "people believe that you are part of the federal government and that is why they are buying your insurance."

Now, let's not fool ourselves. These people don't want themselves on the ballot as G. Dallas Dixon men. They want themselves on the ballot as the candidates of the organization, meaning the organization of the Democratic party. And that is a deception here.

The legislature has spoken to the point, and they have evaded the point. The statutes of New Jersey that allow for the grouping, and bracketing and other things on the ballot, they spoke to the factions that can group together, people who have the same philosophy, two or more candidates for the same office with the same philosophy is one of the statutes, people with the same policy (that might be they

are for or against an issue,) but that is not the same thing.

What we are talking about here is representing themselves and holding themselves out to the ordinary voters as the candidates who are backed by the party itself, through its only official organization, the city, county and town committees. And let's look at the facts here. Again, federal courts are empowered, when constitutional rights are involved, to look independently into the facts as impacted upon by the State statutes.

Let's look at the facts. The very similar name, one word is different, the overlap in leadership, the substantial overlap in membership, (whatever the final number is) operating out of the same offices, operated by the same people. Who knows the difference? One man said to me, when I was working on this case up here that he had

been on one of these committees and he never knew which committee he was meeting with at the meetings.

We have here today Mrs. Dubrovsky, the plaintiff in the State Court proceeding we have mentioned. If your Honor has any question on this point we would offer her as a witness to give us a brief statement.

THE COURT: We are not taking testimony. This is an application on cross-motions. This is not, we are not taking testimony.

MR. ELGIN: At any rate, I wanted to conclude by saying that this is a very basic set of rights that we feel are secured by these constitutional provisions, and they clearly are federal rights under the cases we have cited, and certainly with regard to 14th Amendment.

I think if there is a First Amendment right, people can get together and make a formal endorsement on behalf of a party,

that Mr. Fishman ought to enlighten us as to the authority for that, because I have search for it and I have cited all the cases I can find that are close to the point, and I don't see any that say that. It seem to me that the framers of the Constitution made a very deliberate choice here. They had before them the example of the British systems in particular, where the parties did absolutely control nominations.

Then we also had La Follette's reforms at the turn of the century that led to New Jersey statute in 1903 and all the others of the time, the follow-up reforms that made the primary, as I say, in all but three states the way the nominees were chose by the parties. And this is simply an erosion of those rights. It is a diminution, if you will, under Reynolds vs. Simms.

We have cited Baker vs. Carr, when the Supreme Court entered the political thicket. Ever since then all these cases concerning the weight of voting. We think the right is so fundamental. Even though it is not a barring of ballot access it is a basic handicap on the campaign of the nonendorsed candidate that is in defiance of the prescription of the Legislature.

THE COURT: All right. I understand your position.

Give me one second here, please.

(pause)

THE COURT: This is a case concerning the Mercer County Democratic Committee and the Mercer County Democratic Central Committee. Before the Court are plaintiff's motion -- is plaintiff's motion for preliminary injunction, and by consent of all parties, even though defendant has filed a motion out of time, defendant's cross-motion to dismiss for lack of jurisdiction and for other reasons.

The essence of plaintiff's complaint is that the Mercer County Democratic Central Committee is the alter ego of the Mercer County Democratic Committee, and since New Jersey law prohibits the latter from endorsing primary candidates, it may not do so through the former.

It is the Court's decision that while plaintiff may have a claim under State law,

I fail to see how he has stated a claim under State law, I fail to see how he has stated a claim under federal law upon which relief can be granted, under the motion to dismiss filed by defendants. Plaintiff refers continually to the delegated federal law. Apparently what plaintiff means by this is State law governing the conduct of Congressional elections which the states are allowed to enact pursuant to Article I, Section 4, of the United States Constitution.

I reject the plaintiff's argument since -- since if I accept it, it would have the rather absurd result of making all state election laws when applied to the Congressional or any federal election federal law.

I want to add that it certainly is true that Congress has the power to override State laws governing Congressional or

Senatorial elections, but this unexercised power does not federalize existing State laws which are enacted for the purpose of electing these officials.

For the reasons that I have cited, I cannot grant plaintiff's ad interim or injunctive relief since not only don't they have a -- not only have they failed to demonstrate that they will prevail ultimately on the merits, but I think it has been demonstrated that they cannot prevail on the merits in this matter. Not only should I, I want to point out, are the -- is the likelihood of success remote, or I should say nonexistent, but the equities are strongly against the plaintiff in this matter, as has been demonstrated in the defendant's briefing and affidavits, the fat is already in the fire, if I can use a popular term, the ballots have been arranged for, the printing has been done,

is scheduled to be done.

We are at the eleventh hour, the eleventh minute of the eleventh hour, and I find as a matter of fact from this record submitted to me that the plaintiff certainly knew or at the very least should have known of the existence of the -- well, there is no question he knew of the existence of the Central Committee, but I fail to understand his position in the supplemental affidavit that he only knew of this endorsement procedure and so forth until very, very recently.

It would be extremely costly to reprint these ballots at this point, and as I have mentioned, I think the plaintiff has delayed bringing this action long after he knew of the endorsement and I find for the record, indeed, the complaint itself, that he had knowledge of the procedure.

I think I should also endorse as part of

my decision that it is worth noting that there is no necessary connection between the endorsement which plaintiff challenges and the slogan on the ballot which plaintiff seeks to remove. Rather, it has been demonstrated to me that a candidate who wishes to use a slogan simply submits that slogan before any other candidate submits the same slogan, and if the slogan has not been taken up, the candidate is entitled to the slogan.

All right. Lastly, I should indicate that for the record that it has been some time since this matter was filed with the Court to today, when I have brought this matter on for hearing, but in large part that was caused by the failure of the plaintiff to file a brief with the moving papers. I attempted to do some research myself on the Sunday following the Friday that the papers -- late Friday that these papers were filed

with me. I was unable to come up with any cases in point. Indeed, research by defendants and further research by myself has failed to reflect that this Court is the forum for the relief sought by the plaintiff.

Lastly, I am not in any way passing on the merits of the plaintiff's complaint. He may well have a cause of action in State Court, and my dismissal is totally without merits, and it is for the jurisdictional reason which I have expressed. Because I have dismissed the federal claim, I am also dismissing without prejudice the pendent State Court claims which have been also part of the complaint filed in this matter.

Gentlemen and lady, whether your are satisfied or dissatisfied with the Court's resolution of this matter, that is not the question I am asking you, but is there anything else which is necessary for the

Court to do to dispose of this matter at this time? Plaintiff?

MR. NEIDER: No, your Honor.

THE COURT: Defendants, thatoncludes the matter.

MS. KELLY-BOCCHER: Yes, your Honor.

THE COURT: I will ask the Attorney General to submit an order. Please in your letter of transmittal represent to me you have read it to your co-defendants and the plaintiff and they consent to the form of the order or if they do not, set forth their position.

MS. KELLY-BOCCHER: Yes, your Honor.

THE COURT: Thank you. It has been a pleasure to have you argue this well briefed and well litigated matter. Good day.

(Adjourned at 5:45 p.m.)